

EXHIBIT 2

DOE Commissioner
Frank Edelblut
Deposition
Transcript
Redacted, Publicly-
filed

(Unredacted
version has been
filed under seal)

Local 8027

vs

Frank Edelblut

Docket No. 1:21-cv-01077-PB

FRANK EDELBLUT

May 23, 2023



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<p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE</p> <p style="text-align: center;">CERTIFIED ORIGINAL</p> <p>Local 8027, AFT-New Hampshire, et al.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Frank Edelblut, Commissioner, et al,</p> <p style="text-align: center;">Defendants.</p> <p style="text-align: center;">No. 1:21-cv-01077-PB</p> <p>DEPOSITION OF FRANK EDELBLUT taken on behalf of the Plaintiffs at New Hampshire Department of Education, Concord, New Hampshire, on May 23, 2023, at 10:20 a.m.</p> <p>Court Reporter: Cynthia Foster, LCR LCR #14 (RSA 310-A:161-181)</p>	<p style="text-align: right;">3</p> <p style="text-align: center;">INDEX</p> <p>Deposition of Frank Edelblut</p> <p>Examination by Mr. Moerdler: 7</p> <p>Examination by Mr. Bissonnette: 115</p> <p style="text-align: center;">EXHIBITS</p> <p>38 Email, Edelblut to Farrell, Oct 26, 2021, 23</p> <p>DOE-00710-713</p> <p>39 Email, Edelblut to Farrell, Sept 21, 2022, 35</p> <p>DOE-09896-09898</p> <p>40 Email, DOE Communications Office to Edelblut, 91</p> <p>Oct 5, 2021, with attachments</p> <p>41 Email, Edelblut to m41 hillsboroughnh, 15 Nov 112</p> <p>2021, DOE-00871</p> <p>42 Email, Edelblut to SAU 5, 17 Nov 2021, 113</p> <p>DOE-00866-868</p> <p>43 Email, Edelblut to Breen, 28 Dec 2021, 113</p> <p>DOE-00848-849</p> <p>44 Email, Andrus to Edelblut, 15 May 2022, 114</p> <p>DOE-01136</p> <p>45 Email, Sanborn to Edelblut, 20 Aug 2021, 126</p> <p>DOE-00067-69</p> <p>46 Email, Farrell to Fenton, 19 Aug 2022, 129</p> <p>DOE-009900-9901, 10298-10299</p>
<p style="text-align: right;">2</p> <p>APPEARANCES:</p> <p>On behalf of the Plaintiffs, Local 8027, AFT-New Hampshire, AFL-CIO: STROOCK & STROOCK & LAVAN LLP By: Charles Moerdler, Esq. Elizabeth C. Milburn, Esq. David Kahne, Esq., by Zoom 180 Maiden Lane New York, NY 10038 212-806-5648 cmoerdler@stroock.com ecmilburn@stroock.com</p> <p>On behalf of the Plaintiffs, Christina Philibotte, Andres Mejia, NEA-New Hampshire: ACLU OF NEW HAMPSHIRE By: Gilles Bissonnette, Esq. 18 Low Avenue, Unit 12 Concord, NH 03301 603-225-3080 gilles@aclu-nh.org</p> <p>On behalf of the Defendants, Frank Edelblut, Ahni Malachi, John Formella, et al: NH DEPARTMENT OF JUSTICE By: Nathan W. Kenison-Marvin, Esq. 33 Capitol Street Concord, NH 03301 603-271-1292 nathan.w.kenison-marvin@doj.nh.gov</p> <p>Also present: Elizabeth A. Brown, Attorney Department of Education Office of the Commissioner</p> <p>By Zoom: Peter Perroni, Esq. Nathan Fennessy, Esq., nfennessy@preti.com Morgan Nighan, Esq., mnighan@nixonpeabody.com Jennifer Eber, Esq. Kayla Turner, Esq., kaylat@drcnh.org. Esther Dickinson, Esq., edickinson@nhnea.org</p>	<p style="text-align: right;">4</p> <p>47 Email, Gibson to Malachi, 22 Jul 2021, 133</p> <p>DOE-00308</p> <p>48 Email, Huyett to Edelblut, 25 Aug 2022, 134</p> <p>DOE-07694-95</p> <p>49 Richards to House Executive Departments and Administration, February 18, 2021, 136</p> <p>HB544 0203, 0296, 0297, 0241, 0243, 0244</p> <p>50 How To Be An Antiracist, pages 18-20 146</p> <p>51 CRT Parents Guide, PL00787-788 175</p> <p>52 Email, Edelblut to Dean, 15 Nov 2021, 175</p> <p>DOE-00869-870</p> <p>(Original exhibits retained by reporter)</p> <p>(Scanned copies provided to all counsel)</p>

<p>1 REQUESTS 5</p> <p>2 Page 11 Emails reviewed by Commissioner Edelblut</p> <p>3 in preparation of the deposition</p> <p>4 Page 94 Responsive material to Exhibit 40</p> <p>5 Page 107 Communications</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>7</p> <p>1 MR. MOERDLER: Good morning, Commissioner.</p> <p>2 My name is Charles Moerdler. I'm a member of</p> <p>3 the firm of Stroock & Stroock & Lavan in New</p> <p>4 York, and we represent the American Federation</p> <p>5 of Teachers. To my right is my colleague,</p> <p>6 Elizabeth Milburn, and she, too, is from Stroock</p> <p>7 & Stroock & Lavan, and she, too, represents the</p> <p>8 AFT.</p> <p>9 COMMISSIONER EDELBLUT: Welcome to New</p> <p>10 Hampshire.</p> <p>11 MR. MOERDLER: I spent many a happy year in</p> <p>12 New Hampshire and indeed in Concord, just</p> <p>13 outside of it.</p> <p>14 FRANK EDELBLUT, DULY SWORN</p> <p>15 MR. KENISON-MARVIN: We can do the same</p> <p>16 stipulations with respect to objections and</p> <p>17 reserving rights as we've done in the prior two</p> <p>18 depositions.</p> <p>19 MR. MOERDLER: Agreed.</p> <p>20 MR. KENISON-MARVIN: And also just putting</p> <p>21 on the record the parties' agreement and</p> <p>22 acknowledgement that there is a video recording</p> <p>23 this morning so that counsel of record can</p>
<p>6</p> <p>1 S T I P U L A T I O N S</p> <p>2 It is agreed that the deposition shall</p> <p>3 be taken in the first instance in stenotype and when</p> <p>4 transcribed may be used for all purposes for which</p> <p>5 depositions are competent under New Hampshire</p> <p>6 practice.</p> <p>7 Notice, filing, caption and all other</p> <p>8 formalities are waived. All objections except as to</p> <p>9 form are reserved and may be taken in court at trial.</p> <p>10 It is further agreed that if the</p> <p>11 deposition is not signed within thirty (30) days</p> <p>12 after submission to counsel, the signature of the</p> <p>13 deponent is waived.</p> <p>14 It is further agreed that exhibits may</p> <p>15 be retained by counsel until the time of trial.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>8</p> <p>1 participate by being here live to view the</p> <p>2 deposition as it proceeds today, and that the</p> <p>3 video is for that limited purpose and the</p> <p>4 parties have agreed that no recording shall be</p> <p>5 made of the video.</p> <p>6 MR. BISSONNETTE: I can confirm that</p> <p>7 agreement.</p> <p>8 MR. EDELBLUT: Can you just clarify? You</p> <p>9 said there's a video recording. There's not a</p> <p>10 video. There's video transmission, but there's</p> <p>11 not video recording.</p> <p>12 MR. KENISON-MARVIN: Correct. Thank you.</p> <p>13 I meant just video recording in the sense of</p> <p>14 video running. So thank you. The court</p> <p>15 reporter, Cindy, has informed me that she is</p> <p>16 taking an audio recording for her own quality</p> <p>17 assurance purposes, and she uses that strictly</p> <p>18 for her own quality assurance in creating the</p> <p>19 transcript and that when she's done creating the</p> <p>20 transcript, that work product is permanently</p> <p>21 destroyed. My understanding is consistent with</p> <p>22 your practice?</p> <p>23 COURT REPORTER: Yes.</p>

<p>9</p> <p>1 BY MR. MOERDLER:</p> <p>2 Q Have you been deposed before, Commissioner?</p> <p>3 A I have.</p> <p>4 Q Can you tell us under what circumstances and how</p> <p>5 often if you can remember approximately?</p> <p>6 A Yes. I was deposed about a month ago. For</p> <p>7 another lawsuit involving the State.</p> <p>8 Q And that is the only time?</p> <p>9 A No. I was deposed many, many years ago in</p> <p>10 another party associated with a corporation.</p> <p>11 Q You know that this is going to be a question and</p> <p>12 answer session where your answers are sworn and</p> <p>13 recorded. You have the same duty to tell the</p> <p>14 truth as if you were in court. You understand</p> <p>15 that, sir?</p> <p>16 A I do.</p> <p>17 Q I must go through this.</p> <p>18 A I do know.</p> <p>19 Q It's obligatory. Would you only provide verbal</p> <p>20 answers to questions rather than shaking your</p> <p>21 head which is what most of us do most of the</p> <p>22 time, but would you try and be responsive orally</p> <p>23 and verbally rather than just by motion?</p>	<p>11</p> <p>1 today?</p> <p>2 A So I met with my counsel.</p> <p>3 Q Putting that aside, anything else?</p> <p>4 A I did not.</p> <p>5 Q Did you look at any documents?</p> <p>6 A I did.</p> <p>7 Q And can you tell us what they are?</p> <p>8 A I was provided by my counsel a series of emails.</p> <p>9 Q Do you have a list of those emails?</p> <p>10 A I do not.</p> <p>11 MR. MOERDLER: Nate, can I get a list of</p> <p>12 the emails, please?</p> <p>13 MR. KENISON-MARVIN: To the extent there</p> <p>14 are documents that you reviewed specifically.</p> <p>15 MR. MOERDLER: Yes.</p> <p>16 MR. KENISON-MARVIN: I'm not committing</p> <p>17 that he reviewed the entire list of emails. I</p> <p>18 can talk to the witness about the emails that he</p> <p>19 reviewed prior to the deposition today.</p> <p>20 MR. MOERDLER: Can you do that, please?</p> <p>21 MR. KENISON-MARVIN: We can talk about</p> <p>22 that.</p> <p>23 MR. MOERDLER: What I would like to know is</p>
<p>10</p> <p>1 A I will.</p> <p>2 Q And if you do not answer, if you do not</p> <p>3 understand a question, please ask, and we'll be</p> <p>4 happy to try and oblige. If you do not ask to</p> <p>5 have a question reread, we will assume that you</p> <p>6 have understood it at least to the best of your</p> <p>7 ability and are prepared to answer it; is that</p> <p>8 correct?</p> <p>9 A That's correct.</p> <p>10 Q Please do something I fail to do too often, and</p> <p>11 that is let me finish the question before you</p> <p>12 answer it even though you know where I'm going.</p> <p>13 Is that all right?</p> <p>14 A That's all right.</p> <p>15 Q And if you need any breaks we'll do whatever we</p> <p>16 can to oblige you and accommodate that.</p> <p>17 Do you understand these requests or</p> <p>18 instructions, sir?</p> <p>19 A I do.</p> <p>20 Q And is there any reason you are unable to</p> <p>21 testify truthfully or completely today?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q What did you do to prepare for this deposition</p>	<p>12</p> <p>1 what he reviewed as contrasted necessarily with</p> <p>2 what you've given him. He may not have had a</p> <p>3 chance to read all of them.</p> <p>4 MR. KENISON-MARVIN: I can represent to you</p> <p>5 that he has only been provided with documents</p> <p>6 that are Bates stamped and have been provided to</p> <p>7 Plaintiff's counsel.</p> <p>8 MR. MOERDLER: Perfect. If you could</p> <p>9 provide us the list though I would appreciate</p> <p>10 it.</p> <p>11 Q Okay. Would you please tell us your educational</p> <p>12 background, sir?</p> <p>13 A Sure. I have a bachelor of science degree and a</p> <p>14 master's degree.</p> <p>15 Q In what subject?</p> <p>16 A Bachelor of science degree in business</p> <p>17 administration with an emphasis in accounting,</p> <p>18 and I have a master's degree in theology.</p> <p>19 Q And they are from?</p> <p>20 A The University of Rhode Island is my</p> <p>21 undergraduate degree, and my graduate degree is</p> <p>22 from the Greek Orthodox School of Theology.</p> <p>23 Q And would you tell us your work background? If</p>

<p style="text-align: right;">13</p> <p>1 you can. As completely as you can. In other</p> <p>2 words, your employment background prior to</p> <p>3 becoming Commissioner?</p> <p>4 A Sure. I was initially out of college so I'll</p> <p>5 start there. I'm sure you don't want to know</p> <p>6 when I start working or before that.</p> <p>7 I was an accountant for the firm of</p> <p>8 PriceWaterhouseCoopers. I left there. I was</p> <p>9 the Chief Financial Officer for a company called</p> <p>10 Niagara Corporation. I left there. I started a</p> <p>11 company called Control Solutions. I exited that</p> <p>12 company and was a member of an early stage</p> <p>13 investing group called Common Angels which then</p> <p>14 ultimately changed its name to Converge Systems.</p> <p>15 And so that's my professional career.</p> <p>16 Q And then did there come a point where you ceased</p> <p>17 to be primarily occupied in a professional</p> <p>18 career? In other words, I believe I'm correct</p> <p>19 in stating you became at some point in time a</p> <p>20 member of the New Hampshire House of</p> <p>21 Representatives. Am I right?</p> <p>22 A That's correct.</p> <p>23 Q So was that your first, as somebody who's been</p>	<p style="text-align: right;">15</p> <p>1 A I'm nominated, and then I go through a</p> <p>2 confirmation process with the Governor and</p> <p>3 counsel.</p> <p>4 Q Who nominated you?</p> <p>5 A The Governor.</p> <p>6 Q The Governor nominated you, and then you go to</p> <p>7 the confirmation process; is that correct?</p> <p>8 A That's correct.</p> <p>9 Q That was as of when?</p> <p>10 A In March of 2017, I believe.</p> <p>11 Q And you have been the Commissioner of Education</p> <p>12 since that time?</p> <p>13 A That's correct.</p> <p>14 Q Could you describe your responsibilities as the</p> <p>15 Commissioner of Education for New Hampshire?</p> <p>16 A Sure. So I have oversight responsibility for</p> <p>17 the agency that comprises the New Hampshire</p> <p>18 Department of Education. Many of those</p> <p>19 responsibilities are enumerated in statute.</p> <p>20 Q Would you tell us in your own words what are</p> <p>21 those responsibilities, whether they are</p> <p>22 oversight of the agency or individually,</p> <p>23 separately and apart?</p>
<p style="text-align: right;">14</p> <p>1 down this road, your first adventure into the</p> <p>2 world of politics and government?</p> <p>3 A So what I would say is that in New Hampshire</p> <p>4 participation as a State Representative is not a</p> <p>5 vocational calling such that it would be the</p> <p>6 professional career in the sense that State</p> <p>7 Representatives in New Hampshire earn only \$100</p> <p>8 per year so it would be difficult to make that a</p> <p>9 vocational endeavor.</p> <p>10 Q So were you doing that at the same time that you</p> <p>11 were engaged in some other occupation?</p> <p>12 A Yes.</p> <p>13 Q And what was the other occupation while you were</p> <p>14 doing that?</p> <p>15 A I was a member with Common Angels.</p> <p>16 Q And when did you first become a member of the</p> <p>17 House of Representatives?</p> <p>18 A I believe in the 2014 time frame.</p> <p>19 Q And you then became Commissioner directly from</p> <p>20 your service as a member of the House of</p> <p>21 Representatives; is that correct?</p> <p>22 A That's correct.</p> <p>23 Q And were you appointed?</p>	<p style="text-align: right;">16</p> <p>1 A I'm not sure I understand the question.</p> <p>2 Q Tell me what it is that you are charged with</p> <p>3 actually doing in the area of education.</p> <p>4 MR. KENISON-MARVIN: Objection. Calls for</p> <p>5 a local contention, you can answer.</p> <p>6 MR. MOERDLER: Sorry?</p> <p>7 MR. KENISON-MARVIN: Object to the extent</p> <p>8 it calls for a legal contention. He can answer.</p> <p>9 MR. MOERDLER: All I want to know is what</p> <p>10 he does.</p> <p>11 A So I have oversight responsibility for the</p> <p>12 agency.</p> <p>13 Q And what does the agency do?</p> <p>14 A So the agency has a variety of activities.</p> <p>15 Probably one of the easiest places to understand</p> <p>16 many of those is in statute. Particularly in</p> <p>17 RSA 21:10 I believe is the statute.</p> <p>18 Q Does your agency have responsibility for the</p> <p>19 public school system in the State of New</p> <p>20 Hampshire?</p> <p>21 A I'm not sure I understand what you mean by</p> <p>22 responsibility for them.</p> <p>23 Q Does it have any responsibility for the public</p>

<p style="text-align: right;">17</p> <p>1 school system?</p> <p>2 MR. KENISON-MARVIN: Objection. Vague and</p> <p>3 legal contention. You can answer.</p> <p>4 A So the New Hampshire Department of Education has</p> <p>5 responsibility for administering the statutes,</p> <p>6 many of which govern aspects of the education</p> <p>7 system in New Hampshire, both public, nonpublic</p> <p>8 and other educational programs.</p> <p>9 Q So you do have responsibility, for example, of</p> <p>10 the charter schools.</p> <p>11 A I don't know what you mean by "responsibility."</p> <p>12 Q You have some jurisdictional responsibilities.</p> <p>13 A We have certain statutes that effect charter</p> <p>14 schools, and we're responsible, some of those</p> <p>15 statutes are our responsibility that we</p> <p>16 administer.</p> <p>17 Q All right. Now, in terms of private schools, do</p> <p>18 you have the same kind of areas of</p> <p>19 responsibilities?</p> <p>20 A We have areas of responsibility, but they are</p> <p>21 not the same. They as well, you know, are</p> <p>22 enumerated in statute and rule and we administer</p> <p>23 the statutes and the rules.</p>	<p style="text-align: right;">19</p> <p>1 question. The Department is responsible for</p> <p>2 administrating those statutes and rules as</p> <p>3 they're enumerated.</p> <p>4 Q And when you act in an official capacity, do you</p> <p>5 make a conscious effort to do no more than the</p> <p>6 statute authorizes you as Commissioner to do?</p> <p>7 A So we as an agency attempt to act consistent</p> <p>8 with the statutes and the rules which govern our</p> <p>9 activities.</p> <p>10 Q And do you have anyone who counsels you as to</p> <p>11 whether something is within or not within the</p> <p>12 scope of those statutes?</p> <p>13 A We do as an agency.</p> <p>14 Q And that is?</p> <p>15 A It's a variety of people.</p> <p>16 Q And they are?</p> <p>17 A So we have legal counsel, we have an Attorney</p> <p>18 General's office, we have legislators, and there</p> <p>19 may be others in the agency who observe a</p> <p>20 particular statute and may weigh in on whether</p> <p>21 or not the activities of the agency are within</p> <p>22 the scope of those.</p> <p>23 Q And you make a conscious effort to stay within</p>
<p style="text-align: right;">18</p> <p>1 Q Do you try to stay jurisdictionally within the</p> <p>2 four Corners of those statutes that govern your</p> <p>3 responsibilities?</p> <p>4 MR. KENISON-MARVIN: Objection, vague and</p> <p>5 legal contention.</p> <p>6 Q Let me restate it then. You've indicated in</p> <p>7 your testimony that your responsibilities are</p> <p>8 essentially those that are within the four</p> <p>9 corners of a variety of statutes, correct?</p> <p>10 A I'm not sure I understand the question at this</p> <p>11 point.</p> <p>12 Q I'll restate it again. You've testified that in</p> <p>13 response to my question as to what is your</p> <p>14 responsibility, what are your responsibilities</p> <p>15 as Commissioner, you've said they are oversight</p> <p>16 of those areas as to which statute defines</p> <p>17 responsibilities; is that correct?</p> <p>18 A So statute and rule.</p> <p>19 Q Statute and rule. Now, within that area, do you</p> <p>20 try to keep your activities within the confines</p> <p>21 of that statutory scheme or rule scheme,</p> <p>22 regulatory scheme?</p> <p>23 A So I'm not sure I understand the premise of the</p>	<p style="text-align: right;">20</p> <p>1 those areas; is that correct?</p> <p>2 MR. KENISON-MARVIN: Objection. Vague.</p> <p>3 A The agency administers the statutes and not</p> <p>4 beyond the statutes.</p> <p>5 Q Right. That's all I wanted to know.</p> <p>6 Now, you meet with parents from time to</p> <p>7 time, do you not?</p> <p>8 A I do.</p> <p>9 Q And --</p> <p>10 A Can you just define what you mean by "meet"?</p> <p>11 Just so that we understand.</p> <p>12 Q That's the expression you've used in a number of</p> <p>13 the emails.</p> <p>14 A So I'm just trying to understand what you mean</p> <p>15 by that.</p> <p>16 Q I think I use the English language pretty well,</p> <p>17 sir. Have you been trained in it. Do you get</p> <p>18 together with them?</p> <p>19 A So physically present, on a Zoom call, on a</p> <p>20 telephone, can I just understand what you mean</p> <p>21 by meet.</p> <p>22 Q Do you communicate in an oral capacity with</p> <p>23 parents from time to time?</p>

<p style="text-align: right;">21</p> <p>1 A I do.</p> <p>2 Q Do you communicate with parents in writing from</p> <p>3 time to time?</p> <p>4 A I do.</p> <p>5 Q Is there any other means by which you</p> <p>6 communicate with parents?</p> <p>7 A I'm not sure, again, what you mean by</p> <p>8 communication. If I'm communicating with</p> <p>9 someone --</p> <p>10 Q Sir, all I'm trying to do is get an answer to a</p> <p>11 very simple question. You've pointed me down</p> <p>12 this road by telling me you didn't comprehend</p> <p>13 the word "meet" so I'm going to take all the</p> <p>14 component parts of the word "meet," and I'm</p> <p>15 going to ask you those.</p> <p>16 A Thank you.</p> <p>17 Q I do try to do it as politely as I know how.</p> <p>18 A Yes. So I communicate with parents.</p> <p>19 Q All right. Do you communicate with school</p> <p>20 officials?</p> <p>21 A I do.</p> <p>22 Q Superintendents?</p> <p>23 A Yes.</p>	<p style="text-align: right;">23</p> <p>1 MR. MOERDLER: I'm sorry.</p> <p>2 MR. KENISON-MARVIN: We're up to 38, I</p> <p>3 think.</p> <p>4 (Exhibit 38 marked for identification)</p> <p>5 Q I will come back to the specifics of that</p> <p>6 meeting in a moment. My question to you is here</p> <p>7 is --</p> <p>8 A Might I read through the document first?</p> <p>9 Q Oh, sure. Please. Perhaps you'll read through</p> <p>10 to 0713.</p> <p>11 A Okay. So your question, sir?</p> <p>12 Q [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 Q Who is she? Do you know that?</p> <p>16 MR. KENISON-MARVIN: Objection. Compound.</p> <p>17 You can answer.</p> <p>18 MR. MOERDLER: I'm sorry?</p> <p>19 MR. KENISON-MARVIN: Compound. Form.</p> <p>20 Q Do you know her?</p> <p>21 A I've spoken to her.</p> <p>22 Q Have you met with her?</p> <p>23 A No. I've not met with her.</p>
<p style="text-align: right;">22</p> <p>1 Q Principals?</p> <p>2 A Yes.</p> <p>3 Q People in the administrative area of schools?</p> <p>4 A Yes.</p> <p>5 Q When you do that, do you prepare some form of</p> <p>6 written report for yourself or reminder or memo</p> <p>7 as a matter of course in what you did or what</p> <p>8 you're going to do?</p> <p>9 A As a matter of course, no.</p> <p>10 Q Now, do you meet with political party officials?</p> <p>11 A I have.</p> <p>12 Q All right. Give me just a moment. I'm trying</p> <p>13 to find a document. I do apologize, sir.</p> <p>14 So I'm going to show you a document that</p> <p>15 has been Bates numbered by the Attorney</p> <p>16 General's office in producing it to us. It's</p> <p>17 document numbered 0711. It is a portion of the</p> <p>18 production covering additional pages to that.</p> <p>19 If you'll look at page 0711 it is led by 0700 as</p> <p>20 a memo or an email from you to a man by the name</p> <p>21 of [REDACTED] with a copy to Diana Fenton.</p> <p>22 MR. KENISON-MARVIN: Objection.</p> <p>23 Foundation. Can we mark this?</p>	<p style="text-align: right;">24</p> <p>1 Q Now, what I would like to just go through with</p> <p>2 you is this apparently, I say apparently, if you</p> <p>3 look at page 0712, [REDACTED]</p> <p>4 communicated with you concerning an issue at</p> <p>5 Kensington Elementary SAU 16, and you indicated</p> <p>6 at the top of page 0712 that your memory was</p> <p>7 refreshed, and you know the issue and spoke with</p> <p>8 the superintendent.</p> <p>9 Can you give us your best present</p> <p>10 recollection of what that issue was?</p> <p>11 A Sure. So my memory was refreshed because I did</p> <p>12 not recall what SAU she was involved in, and I</p> <p>13 believe that [REDACTED], the parent of a student as</p> <p>14 she expressed in the initial email dated</p> <p>15 September 30th, was concerned about the content</p> <p>16 of a reading book in her daughter's classroom.</p> <p>17 Q And upon receiving this information, you spoke</p> <p>18 to the superintendent of SAU 16?</p> <p>19 A That's correct.</p> <p>20 Q And do you have any recollection at all as to</p> <p>21 what you said to the superintendent and what he</p> <p>22 said to you or she said to you?</p> <p>23 A I don't have specifics in terms of what the</p>

<p style="text-align: right;">25</p> <p>1 content of that conversation was. I can try</p> <p>2 to --</p> <p>3 Q Give me your best present recollection.</p> <p>4 A Yes. So my recollection would be that I would</p> <p>5 point out that there is a parent of a student in</p> <p>6 the district who is concerned about a particular</p> <p>7 reading material in her classroom.</p> <p>8 Q And you communicated to that superintendent that</p> <p>9 concern; am I correct?</p> <p>10 A I believe so.</p> <p>11 Q Did you give the superintendent any counsel as</p> <p>12 to what he or she should or shouldn't do in</p> <p>13 regard thereto?</p> <p>14 A I don't recall any specific counsel.</p> <p>15 Q Do you know what the superintendent said to you?</p> <p>16 A I don't recall what the superintendent said to</p> <p>17 me.</p> <p>18 Q And do you remember reading the book?</p> <p>19 A I do.</p> <p>20 Q Do you know what the book was?</p> <p>21 A I may be able to recollect from --</p> <p>22 Q Perhaps I can help you, sir.</p> <p>23 A Okay.</p>	<p style="text-align: right;">27</p> <p>1 fidelity to the law.</p> <p>2 Q Do you do it personally or do you delegate it?</p> <p>3 MR. KENISON-MARVIN: Same objection.</p> <p>4 A I would say as a Commissioner I am both doing</p> <p>5 activities as well as delegating activities.</p> <p>6 Q Now, here is a parent who has complained about a</p> <p>7 book, and I will go into that book in a little</p> <p>8 while. What is your normal reaction, if there</p> <p>9 is a normal reaction, when a parent complains</p> <p>10 about a book, do you pick up the book and try</p> <p>11 and read it? Do you find out what the issue is?</p> <p>12 What is the norm?</p> <p>13 A So it would depend on the circumstances of the</p> <p>14 individual inquiry into the Department.</p> <p>15 Q Let's take a look at the query.</p> <p>16 A Okay.</p> <p>17 Q The query is on page 713. What was it in that</p> <p>18 query that triggered you to read the book?</p> <p>19 A Because I had a concerned parent.</p> <p>20 Q So that was my question. When you have a</p> <p>21 concerned parent, do you then try and get to the</p> <p>22 bottom of the concern, communicate the concern,</p> <p>23 and try and find out exactly what's involved?</p>
<p style="text-align: right;">26</p> <p>1 Q This is a book called A Good Kind of Trouble.</p> <p>2 A Okay.</p> <p>3 Q And do you remember reading it?</p> <p>4 A I do recall reading it. I read a number of</p> <p>5 books. I don't remember the details of the</p> <p>6 book.</p> <p>7 Q What I'm really trying to get at, sir, and I'm</p> <p>8 trying to simplify it, if not I can go back into</p> <p>9 the depths of it, would it be fair to say that</p> <p>10 you are an activist Commissioner, hands-on</p> <p>11 Commissioner, who believes in dealing with those</p> <p>12 people in those areas that you have</p> <p>13 responsibility either by oversight or otherwise</p> <p>14 responsibility for? Is that a fair statement?</p> <p>15 MR. KENISON-MARVIN: Objection. Vague.</p> <p>16 A So I would say that I am a Commissioner who</p> <p>17 tries to execute his responsibilities with</p> <p>18 fidelity to the law and the rule.</p> <p>19 Q Do you do that on an active basis or delegative</p> <p>20 basis?</p> <p>21 MR. KENISON-MARVIN: Same objection.</p> <p>22 A So again, I would say that I am a Commissioner</p> <p>23 who tries to execute his responsibilities with</p>	<p style="text-align: right;">28</p> <p>1 MR. KENISON-MARVIN: Objection. Compound.</p> <p>2 You can answer.</p> <p>3 A So --</p> <p>4 Q I'm happy to break it down.</p> <p>5 MR. KENISON-MARVIN: I guess I would ask</p> <p>6 that we do it one question at a time if we can</p> <p>7 as a matter of course.</p> <p>8 Q I'm trying to do that.</p> <p>9 A So again, depending on the individual inquiry to</p> <p>10 me, I might take different pathways in terms of</p> <p>11 trying to understand the context of the concern</p> <p>12 of the parent.</p> <p>13 Q So let me take you to that concern as expressed</p> <p>14 on 0713.</p> <p>15 A Okay.</p> <p>16 Q What was it in that concern that triggered you</p> <p>17 to read the book?</p> <p>18 A Because the parent had reached out to me.</p> <p>19 Q So when a parent reaches out to you and says</p> <p>20 that he or she has a concern about a book and</p> <p>21 gives you some details as here, is it your</p> <p>22 practice to then read the book?</p> <p>23 A I do read quite a lot of content, yes.</p>

<p style="text-align: right;">29</p> <p>1 Q And where in the statutes that you said marked</p> <p>2 your responsibility is there one that says you</p> <p>3 have a duty to read books?</p> <p>4 A So my duty is to support my customers to the</p> <p>5 agency which include a variety of</p> <p>6 constituencies. Parents are one of them. So I</p> <p>7 try to be as prepared as possible to support my</p> <p>8 constituencies.</p> <p>9 Q And then what was it that you did in terms of</p> <p>10 calling and scheduling an appointment with the</p> <p>11 superintendent?</p> <p>12 A I'm sorry. Can you -- I'm not sure I understand</p> <p>13 the question.</p> <p>14 Q Well, let me take you over to document number</p> <p>15 DOE 70.</p> <p>16 MR. BISSONNETTE: Fenton Exhibit 19 that</p> <p>17 was previously marked. Nate will hold the</p> <p>18 exhibits.</p> <p>19 Q Who is David Ryan, sir?</p> <p>20 A Can I just read the email first?</p> <p>21 Q Oh, please do.</p> <p>22 A Okay. I've read the email.</p> <p>23 Q If you will go back and look at the document</p>	<p style="text-align: right;">31</p> <p>1 Q And what if you can recall was the general gist</p> <p>2 because you said you could not remember</p> <p>3 specifics, and I understand that. What was the</p> <p>4 general gist of your communication with the</p> <p>5 superintendent?</p> <p>6 A That he had a parent who was concerned about the</p> <p>7 content of a reading book in the classroom.</p> <p>8 Q And you have read the book, I take it, at this</p> <p>9 point?</p> <p>10 A I did.</p> <p>11 Q Did you form an impression concerning the book?</p> <p>12 A I don't know what that means.</p> <p>13 Q Well, normally when you read a book, you either</p> <p>14 like it, you dislike it, it's a tough book, it's</p> <p>15 a not tough book. Did you form any impression</p> <p>16 concerning the book?</p> <p>17 A The recollection that I have from reading the</p> <p>18 book in particular was that it was very poorly</p> <p>19 written.</p> <p>20 Q And did you do anything beyond communicating the</p> <p>21 concern of the parent to the superintendent?</p> <p>22 A At that time, that was the extent of it.</p> <p>23 Q Did you thereafter do anything concerning that</p>
<p style="text-align: right;">30</p> <p>1 that was 711 which is in front of you, you will</p> <p>2 see that the date of your first email in there</p> <p>3 is in the month of October, but that there are</p> <p>4 emails going back for a little while before</p> <p>5 that. So, for example, if we look at the</p> <p>6 document that is Exhibit 19 you will see it goes</p> <p>7 back to August. So would it be fair to say that</p> <p>8 this query spanned a period of several months?</p> <p>9 A So I just want to correct. You mentioned that</p> <p>10 my first email was in October, but it's actually</p> <p>11 September 30th.</p> <p>12 Q That's all right. That's all right.</p> <p>13 A Okay. So it does seem that there have been,</p> <p>14 there's issues related to the Exhibit 38 which</p> <p>15 are specifically enumerated in that email. In</p> <p>16 the Exhibit 19 which you provided to me, it</p> <p>17 seems that there are a number of concerns that</p> <p>18 this parent is raising.</p> <p>19 Q And you tried to get hold of the superintendent</p> <p>20 there?</p> <p>21 A That's correct.</p> <p>22 Q And to discuss it with the superintendent?</p> <p>23 A That's correct.</p>	<p style="text-align: right;">32</p> <p>1 book?</p> <p>2 A So with respect to this book, subsequent, I</p> <p>3 don't recall the date, the school invited me to</p> <p>4 an event, and when I was at that event, then</p> <p>5 they asked me to meet with the superintendent,</p> <p>6 the two assistant superintendents, and the</p> <p>7 principal to talk about that book.</p> <p>8 Q Do you have a recollection of what was said by</p> <p>9 whom including yourself at that meeting?</p> <p>10 A I think it was the same conversation that I had</p> <p>11 expressed to the superintendent, assuming that I</p> <p>12 had connected to him. I don't recall</p> <p>13 specifically. But that there was a parent who</p> <p>14 was concerned about the content of this book. I</p> <p>15 believe that the school also shared information</p> <p>16 about this parent.</p> <p>17 Q Was the book a book that was read in class; is</p> <p>18 that what you said?</p> <p>19 A So my understanding from the email from [REDACTED] is</p> <p>20 that this is a book that, it says in her email</p> <p>21 this book was read aloud to my daughter's entire</p> <p>22 class. And so Read-Aloud is a pedagogical</p> <p>23 technique where a teacher will actually read a</p>

<p style="text-align: right;">33</p> <p>1 book to a group of students.</p> <p>2 Q And do teachers also assign books to read at</p> <p>3 home as homework or otherwise?</p> <p>4 A Some teachers may.</p> <p>5 Q And do teachers say to students in these reading</p> <p>6 type of courses go select a book and tell us</p> <p>7 what you think of it?</p> <p>8 A Some teachers may.</p> <p>9 Q And do they give them areas in respect of which</p> <p>10 those books to be read should fall?</p> <p>11 A They may do that or not. That would not be part</p> <p>12 of a Read-Aloud though.</p> <p>13 Q What would be?</p> <p>14 A So a Read-Aloud is where --</p> <p>15 Q No, no. What would that be?</p> <p>16 A What would what be?</p> <p>17 Q When you assign a subject matter to a student to</p> <p>18 find a book, read it and report on it?</p> <p>19 A That would be a pedagogical exercise that the</p> <p>20 teacher assigns to the student.</p> <p>21 Q All right. Now, do you have any recollection</p> <p>22 you were asked to look at a book that had been</p> <p>23 selected by a student in that regard?</p>	<p style="text-align: right;">35</p> <p>1 (Discussion off the record)</p> <p>2 Q Let me see if we can move to another area and</p> <p>3 come back to this.</p> <p>4 (Exhibit 39 marked for identification)</p> <p>5 A Okay. So your question. I've read the email.</p> <p>6 Q Now, you have before you a document that bears</p> <p>7 Bates numbers 09896 and running through 09898,</p> <p>8 Bates marked numbers having been affixed by your</p> <p>9 counsel.</p> <p>10 Have you had a chance to read this?</p> <p>11 A I have.</p> <p>12 Q Now, do you know Betsi Harrington?</p> <p>13 A I do.</p> <p>14 Q How long have you known Ms. Harrington?</p> <p>15 A Since she contacted the agency.</p> <p>16 Q Not before that?</p> <p>17 A No.</p> <p>18 Q And when you received the email from Ms.</p> <p>19 Harrington dated September 20, 2022, did you</p> <p>20 read the book?</p> <p>21 A I did not. Actually which book was this? Let</p> <p>22 me just see what book is that? Yeah, so I was</p> <p>23 not able to because it was on the Sora app, and</p>
<p style="text-align: right;">34</p> <p>1 A You mean any time or in this context?</p> <p>2 Q Any time.</p> <p>3 A Any time. So I have been on school visits where</p> <p>4 students are participating in the pedagogy that</p> <p>5 you've described, and the students may be in an</p> <p>6 independent reading time, and so the educators</p> <p>7 have encouraged me, and I've encouraged myself</p> <p>8 as well to sit down with students and ask them</p> <p>9 what are you reading about. So that probably</p> <p>10 has happened many times at that point in time.</p> <p>11 Q Do they to the best of your knowledge,</p> <p>12 information, belief have in the New Hampshire</p> <p>13 school system a reading club in various of the</p> <p>14 schools?</p> <p>15 MR. KENISON-MARVIN: Objection. Vague.</p> <p>16 A Yeah. I'm not sure what you mean by "reading</p> <p>17 club."</p> <p>18 Q Do they have clubs where students are encouraged</p> <p>19 to read books of one kind or another?</p> <p>20 MR. KENISON-MARVIN: Same objection.</p> <p>21 A I have no knowledge of a specific club, but I</p> <p>22 would assume that there probably are clubs, but</p> <p>23 I have no knowledge of them.</p>	<p style="text-align: right;">36</p> <p>1 I didn't have access to that.</p> <p>2 Q So you've not seen or consulted the Sora app?</p> <p>3 A So can you correct that? Rephrase that</p> <p>4 question?</p> <p>5 Q Have you ever consulted or looked at the Sora</p> <p>6 app?</p> <p>7 A So I've only seen screen shots of it because I</p> <p>8 didn't have access to it --</p> <p>9 Q All right.</p> <p>10 A -- at this time.</p> <p>11 Q It's an app according to Ms. Harrington that's</p> <p>12 used in many of the schools in the state.</p> <p>13 A That's correct.</p> <p>14 Q Do you have occasion to check the various apps</p> <p>15 that are used by the schools in the state?</p> <p>16 MR. KENISON-MARVIN: Objection. Vague.</p> <p>17 A I do not.</p> <p>18 Q Does your Department?</p> <p>19 A It would depend upon the nature of the checking</p> <p>20 what an agency might have access to. Sora would</p> <p>21 not be one of those applications that we would</p> <p>22 have access to.</p> <p>23 Q Is it not a commonly used application?</p>

<p>37</p> <p>1 A It's in many of our schools.</p> <p>2 Q Why wouldn't you have access to it?</p> <p>3 A Because that would constitute in most cases</p> <p>4 curricular material, and the curricular material</p> <p>5 is the domain of the school, and it is not</p> <p>6 inside the jurisdiction of the agency.</p> <p>7 Q Let me see if I understand what you just said to</p> <p>8 me.</p> <p>9 A Okay.</p> <p>10 Q Your agency does not have oversight jurisdiction</p> <p>11 of matters relating to curricular; is that what</p> <p>12 you're saying?</p> <p>13 A That's correct.</p> <p>14 Q And you do not look into that or inquire into</p> <p>15 that?</p> <p>16 A Well, so I mean, again, the inquiries would</p> <p>17 happen, we saw in an example here where someone</p> <p>18 brought curricula material to our attention. We</p> <p>19 are seeing here where a parent is bringing</p> <p>20 curricula material to our attention. So that is</p> <p>21 how the curricula material comes to our</p> <p>22 attention.</p> <p>23 Q And does that happen frequently, infrequently,</p>	<p>39</p> <p>1 clumsy in it, I apologize. If you send an email</p> <p>2 to Mr. Farrell, does it presuppose that he will</p> <p>3 look at it?</p> <p>4 A It would depend upon the nature of the email</p> <p>5 that was sent to Rich, but when I send an email</p> <p>6 to someone I do understand that they will look</p> <p>7 at it, but I don't have, I guess it depends on</p> <p>8 what the email is and their reaction to that,</p> <p>9 but that was the assumption.</p> <p>10 Q You don't intend it to be a deadend street, you</p> <p>11 just sent it to him?</p> <p>12 A No. I assume that he will take the appropriate</p> <p>13 action.</p> <p>14 Q All right. Now, what kind of action would you</p> <p>15 expect him to take?</p> <p>16 A That would depend upon the nature of the email</p> <p>17 that I send to him.</p> <p>18 Q All right. Let's take this one as an example.</p> <p>19 A Okay.</p> <p>20 Q What would you expect him to do?</p> <p>21 A Well, so this particular email has a number of</p> <p>22 different pieces of content so there may be a</p> <p>23 number of different aspects of this that Rich</p>
<p>38</p> <p>1 just periodically? What is your best</p> <p>2 recollection?</p> <p>3 A I would describe it as periodically.</p> <p>4 Q All right. And when you received this email</p> <p>5 from Ms. Harrington --</p> <p>6 A Yes.</p> <p>7 Q -- and she had some concerns about the app and</p> <p>8 what it showed and what it led to, you asked</p> <p>9 that she give you a call to discuss it?</p> <p>10 A Yes.</p> <p>11 Q Why?</p> <p>12 A So that I could understand the details of the</p> <p>13 problem that she understood there to be.</p> <p>14 Q And what did you do by way of followup, if</p> <p>15 anything?</p> <p>16 A Well, when I'm looking at this particular email</p> <p>17 I sent that to Rich Farrell.</p> <p>18 Q And what did you ask him to do?</p> <p>19 A I didn't ask him to do anything.</p> <p>20 Q Why did you send it to him?</p> <p>21 A Because this would fall within his domain at the</p> <p>22 agency as something that needed to be looked at.</p> <p>23 Q So let me get this straight, and if I'm being</p>	<p>40</p> <p>1 may or may not take a look at.</p> <p>2 Q And do you have any expectation when you send</p> <p>3 this one, for example, to Mr. Farrell that he</p> <p>4 would inquire into what was involved here,</p> <p>5 whether the claim was correct or not correct?</p> <p>6 A Again, I assume he would take whatever the</p> <p>7 appropriate action is with respect to this</p> <p>8 information.</p> <p>9 Q Would you expect a report back from him on it?</p> <p>10 A So he would probably report back not specific to</p> <p>11 this but in a more general context of reporting</p> <p>12 on activities that his particular bureau is</p> <p>13 working on.</p> <p>14 Q You have a periodic meeting of a misconduct</p> <p>15 committee?</p> <p>16 A We do. That would be incorrect. It's not a</p> <p>17 committee.</p> <p>18 Q It's a grouping of three people, correct?</p> <p>19 A There are personnel. Okay.</p> <p>20 Q I apologize. Is that where you would expect</p> <p>21 this to be reported on?</p> <p>22 A If there was something that needed to be brought</p> <p>23 to my attention, that would be the format and</p>

<p style="text-align: right;">41</p> <p>1 the forum whereby it would be brought to my</p> <p>2 attention, correct.</p> <p>3 Q All right. If you haven't heard back from Mr.</p> <p>4 Farrell on, hypothetically, this issue, do you</p> <p>5 follow up? Is that your practice?</p> <p>6 A It would depend upon the nature of the issue.</p> <p>7 Q On issues such as is here tendered.</p> <p>8 A So in this particular case, you know, I would</p> <p>9 assume that he would explain that to me in one</p> <p>10 of my educator misconduct meetings and bring</p> <p>11 that to my attention. If not, I may have</p> <p>12 brought it up or I may not have. I don't know</p> <p>13 the answer to that.</p> <p>14 Q Fair enough. And would you expect to see some</p> <p>15 sort of a written report from him on the</p> <p>16 subject?</p> <p>17 A Generally, I don't review written reports.</p> <p>18 Q So you deal primarily with him in terms of oral</p> <p>19 communications?</p> <p>20 A Well, we have the meeting where he's describing</p> <p>21 and explaining things, correct.</p> <p>22 Q Now, am I correct that there are three people</p> <p>23 who attend these meetings; they are Ms. Fenton,</p>	<p style="text-align: right;">43</p> <p>1 with it, and I have no further inquiry.</p> <p>2 And the other thing that sometimes happens</p> <p>3 is maybe you have this inquiry followed by other</p> <p>4 inquiry by the same family. You know.</p> <p>5 Q Does there come a point in time or has there</p> <p>6 ever come a point in time when there is a</p> <p>7 question in your mind that this ought to be</p> <p>8 examined further, investigated formally or</p> <p>9 reported to the Human Resources or Rights</p> <p>10 Commission? Has that ever happened?</p> <p>11 MR. KENISON-MARVIN: Objection. Vague and</p> <p>12 compound.</p> <p>13 A That's a little bit compound. If you would</p> <p>14 break that down.</p> <p>15 Q Sure.</p> <p>16 A Because you escalated considerably in that</p> <p>17 conversation.</p> <p>18 Q Please understand, I have nothing about the</p> <p>19 utmost respect for you as an activist,</p> <p>20 purposeful, and proper Commissioner in any way,</p> <p>21 shape or form. And so what I'm trying to do is</p> <p>22 to phrase my questions so I can get through this</p> <p>23 as fast as I can.</p>
<p style="text-align: right;">42</p> <p>1 Mr. Farrell, and you usually; is that correct?</p> <p>2 A Generally, and sometimes occasionally the Deputy</p> <p>3 Commissioner might sit in as well.</p> <p>4 Q Does Mr. Berwick sit in?</p> <p>5 A Generally, he does not participate.</p> <p>6 Q And are there any notes, memoranda or the like</p> <p>7 maintained at those meetings?</p> <p>8 A So I don't maintain any notes or memoranda.</p> <p>9 Q Do you know if anyone does?</p> <p>10 A I don't know the answer to that.</p> <p>11 Q Are they recorded?</p> <p>12 A They're not to my knowledge.</p> <p>13 Q Let's assume hypothetically that he reported on</p> <p>14 something concerning this, and he said that's</p> <p>15 nothing, don't worry about it. Is that the end</p> <p>16 of it?</p> <p>17 MR. KENISON-MARVIN: Objection. Vague.</p> <p>18 Q I'm trying to just understand the process.</p> <p>19 A So it may be that he comments, and that's the</p> <p>20 end of it or it may be that I say had you</p> <p>21 considered this or, you know, just in my typical</p> <p>22 supervisory role I may inquire about it or I may</p> <p>23 assume that he's done whatever he needs to do</p>	<p style="text-align: right;">44</p> <p>1 A Very well.</p> <p>2 Q To your benefit and mine. Does there ever come</p> <p>3 a time that any of these misconduct committee</p> <p>4 meetings, I'm calling it a committee but it is</p> <p>5 not a formal committee, I understand that.</p> <p>6 A Just a meeting in the Department.</p> <p>7 Q Well, I should tell you your colleagues have</p> <p>8 referred to it as the misconduct committee.</p> <p>9 When there is an issue raised that is</p> <p>10 elevated in your mind to being a matter of</p> <p>11 further concern --</p> <p>12 A So I just want to go on the record. You</p> <p>13 referred to me as an activist, and I think</p> <p>14 that's an incorrect characterization of the role</p> <p>15 that I play.</p> <p>16 Q It was intended as a compliment, sir.</p> <p>17 A But as a role that I play as the Commissioner.</p> <p>18 So then can you please repeat the questions?</p> <p>19 Q Please understand I have served as a</p> <p>20 Commissioner of the State of New York and of the</p> <p>21 City of New York, and I think of nothing higher</p> <p>22 in deserving of respect and I still serve as one</p> <p>23 than an activist Commissioner who does his job.</p>

<p style="text-align: right;">45</p> <p>1 So I meant that has a compliment, sir.</p> <p>2 A If you may repeat the question for me?</p> <p>3 Q Madame reporter?</p> <p>4 (Requested portion read back by court reporter)</p> <p>5 A Certainly.</p> <p>6 Q And what do you do then, if I may? If there is</p> <p>7 a practice or general procedure.</p> <p>8 MR. KENISON-MARVIN: Objection. Compound.</p> <p>9 A There is conversation in the meeting until we</p> <p>10 determine what the next steps should be, if any.</p> <p>11 Q And at the end of the day, who makes the</p> <p>12 decision, you?</p> <p>13 A Well, I mean we all are collaborating around</p> <p>14 what would happen next. So it would depend on</p> <p>15 the individual case.</p> <p>16 Q And to coin a phrase, does the buck stop with</p> <p>17 you, sir?</p> <p>18 MR. KENISON-MARVIN: Objection. Vague.</p> <p>19 A The buck does stop at Commissioner.</p> <p>20 Q I'm quoting Mr. Farrell, sir.</p> <p>21 All right. Now, what I'd like to</p> <p>22 ascertain, this email that is Exhibit 39 raises</p> <p>23 a number of questions about the propriety of the</p>	<p style="text-align: right;">47</p> <p>1 145. It has redacted content. I don't know</p> <p>2 what that is. And then it has what is</p> <p>3 referenced as 91:297 and other sections of law,</p> <p>4 and then it's further redacted. So you're</p> <p>5 saying that this is?</p> <p>6 Q We have been using in the depositions thus far</p> <p>7 the phrase HB 2.</p> <p>8 A To refer to this document.</p> <p>9 Q For discussion purposes, for simplicity, I can</p> <p>10 refer to as the material in Exhibit 1 if you</p> <p>11 prefer. I can do it in any way that is most</p> <p>12 convenient for you.</p> <p>13 A Okay. I'm comfortable, have the document, and I</p> <p>14 have, without going to the state statutory rule</p> <p>15 I wouldn't know if this is the exact language or</p> <p>16 not, but I have the document presented to me.</p> <p>17 Q Did you form an opinion to the best of your</p> <p>18 recollection that the claims that here were</p> <p>19 made, referring to Exhibit 39, rose to the level</p> <p>20 of a potential questionable violation of HB 2?</p> <p>21 MR. KENISON-MARVIN: Objection. Vague.</p> <p>22 A Yes. So with respect to this particular</p> <p>23 complaint, my recollection is that the direction</p>
<p style="text-align: right;">46</p> <p>1 materials that one can get through the Sora app.</p> <p>2 A That's correct.</p> <p>3 Q Did you at this point in time, September of</p> <p>4 2022, have a view as to whether or not this was</p> <p>5 something that would constitute a potential</p> <p>6 violation of or concern with respect to what is</p> <p>7 known as HB 2 and what's been referred to in</p> <p>8 these depositions as HB 2?</p> <p>9 MR. KENISON-MARVIN: Objection, vague,</p> <p>10 foundation, compound.</p> <p>11 Q Let's see if we can agree. Exhibit 1 is the</p> <p>12 full text of the so-called Banned Concepts Act.</p> <p>13 I show it to you, sir.</p> <p>14 MR. KENISON-MARVIN: Exhibit 1. I'll</p> <p>15 provide it to the witness.</p> <p>16 MR. BISSONNETTE: I would note for the</p> <p>17 record that the cover page of this document that</p> <p>18 I created as this was affixed as Exhibit 1</p> <p>19 attached to the Philibotte and Mejia Complaint</p> <p>20 filed in this case.</p> <p>21 A So I have a document in front of me, you know,</p> <p>22 referencing Chapter 91, HB 2. It has several,</p> <p>23 an Amended Analysis, and then it goes to page</p>	<p style="text-align: right;">48</p> <p>1 we took was not concern over a specific piece of</p> <p>2 content so much as it was the Sora app and what</p> <p>3 students may or may not be able to access using</p> <p>4 that particular application and whether schools</p> <p>5 had configured correct security parameters in</p> <p>6 that application to prevent students from</p> <p>7 accessing content that may not be</p> <p>8 developmentally appropriate for them.</p> <p>9 Q Is this app available to students outside of the</p> <p>10 classroom context?</p> <p>11 A These are part of the inquiries that we were</p> <p>12 trying to make and to understand how does a</p> <p>13 student access it, what are the protections that</p> <p>14 are afforded relative to this application.</p> <p>15 You know, my recollection from the various</p> <p>16 conversations I had both with Ms. Harrington as</p> <p>17 well as other school personnel relative to this</p> <p>18 is that generally if the application is</p> <p>19 configured correctly, in the school setting,</p> <p>20 that we are able to limit students to</p> <p>21 appropriate levels of content or the application</p> <p>22 itself possesses the ability to limit students</p> <p>23 to developmentally appropriate content.</p>

<p style="text-align: right;">49</p> <p>1 But there was concern that when a student</p> <p>2 is outside of the school environment and outside</p> <p>3 of the school's either devices or firewall that</p> <p>4 there may be an opportunity for that student to</p> <p>5 use a third party device to use their log-in to</p> <p>6 access the app and access material that may be</p> <p>7 developmentally inappropriate for those</p> <p>8 students.</p> <p>9 Q And what, if anything, did you do about that?</p> <p>10 A So we had a number of conversations. We spoke</p> <p>11 with the individuals at this particular school.</p> <p>12 I believe it was the superintendent, it may have</p> <p>13 been the librarian, to explain, and we had</p> <p>14 conversations with Sora to understand what the</p> <p>15 controls are in place. There's the ability to</p> <p>16 in Sora to allow certain materials to be</p> <p>17 accessible to different age levels based on</p> <p>18 developmentally appropriate content and make</p> <p>19 sure that this particular School District was</p> <p>20 able to configure those controls and implement</p> <p>21 those. I believe in this case that those times</p> <p>22 of controls had not been configured.</p> <p>23 Q And was the application available to or used by,</p>	<p style="text-align: right;">51</p> <p>1 available, the application, to students outside</p> <p>2 of the school setting? In other words,</p> <p>3 extracurricular like?</p> <p>4 A I'm not sure I understand the question.</p> <p>5 Q You indicated that the application is available</p> <p>6 to students outside of the school setting,</p> <p>7 correct?</p> <p>8 A Well, so again, depending upon how it was</p> <p>9 configured.</p> <p>10 Q So it's the configuration rather than the</p> <p>11 application, right?</p> <p>12 A Those are the same things. You have an</p> <p>13 application that is configured. So how you</p> <p>14 configure the application is what determines</p> <p>15 your ability to access it in various modalities.</p> <p>16 Q And if it had been inappropriately or not</p> <p>17 configured at all, would this type of conduct</p> <p>18 have risen to the level where you would have had</p> <p>19 some concerns respecting HB 2?</p> <p>20 MR. KENISON-MARVIN: Objection. Vague.</p> <p>21 A I'm not sure I understand the --</p> <p>22 Q Well, let me be specific. You have before you</p> <p>23 Exhibit 39, and you have specific claims there</p>
<p style="text-align: right;">50</p> <p>1 and I know that's compound but I can break it</p> <p>2 down if you wish, any other school to the best</p> <p>3 of your knowledge?</p> <p>4 A I believe it's in a number of schools.</p> <p>5 Q A number of them.</p> <p>6 A That's correct.</p> <p>7 Q And did you have that communication with the</p> <p>8 other schools also?</p> <p>9 A So we had that communication with a number of</p> <p>10 the schools where that issue took place just</p> <p>11 informally. It may have been the content of a</p> <p>12 broader communication. We do calls with our</p> <p>13 school leaders, and we may have notified them in</p> <p>14 that call that if you're using Sora, there are</p> <p>15 certain configuration aspects that need to be</p> <p>16 done.</p> <p>17 We did speak with Sora to make sure that</p> <p>18 they as the vendor were able to work with their</p> <p>19 customers who are the school districts to make</p> <p>20 sure that Sora communicated to the districts</p> <p>21 that these access controls are available to</p> <p>22 them.</p> <p>23 Q To what extent did you find that they were</p>	<p style="text-align: right;">52</p> <p>1 of it being inappropriately configured from the</p> <p>2 standpoint of Ms. Harrington, and you indicated</p> <p>3 that on the basis of what you had been given by</p> <p>4 way of information that the application as used</p> <p>5 in one or more of the schools had not been</p> <p>6 properly configured when made available to</p> <p>7 students. And my question is -- did you view</p> <p>8 the application, by the way, at any point?</p> <p>9 A So ultimately, I had Sora provide me with access</p> <p>10 to the application, but this was much later down</p> <p>11 the process.</p> <p>12 Q Okay. Did you at any point form an opinion,</p> <p>13 howsoever limited, as to whether when not</p> <p>14 properly configured or not configured at all</p> <p>15 information such as that as appears in Exhibit</p> <p>16 39 would rise to the level of a potential</p> <p>17 violation of HB 2 or the document before you?</p> <p>18 MR. KENISON-MARVIN: Objection. Vague and</p> <p>19 to the extent this question is based on premises</p> <p>20 leading up to this question that misstates prior</p> <p>21 testimony. You can answer.</p> <p>22 A So my recollection of this particular incident</p> <p>23 is that it was focused on the issue of access to</p>

<p style="text-align: right;">53</p> <p>1 the Sora content. I don't recall that there was</p> <p>2 an educator misconduct aspect discussed relative</p> <p>3 to this. I don't have that recollection.</p> <p>4 What I do recall relative to this is</p> <p>5 principally the issue of the Sora application</p> <p>6 and access to developmentally inappropriate</p> <p>7 materials.</p> <p>8 Q Did you think the information it gleaned as</p> <p>9 determined on page 09898 by Ms. Harrington would</p> <p>10 be information that would be violative of HB 2</p> <p>11 or would warrant checking whether it was?</p> <p>12 MR. KENISON-MARVIN: Objection, vague,</p> <p>13 compound, legal contention.</p> <p>14 A I have not actually gone through that exercise</p> <p>15 at this point in time.</p> <p>16 Q Have you ever looked at a complaint through the</p> <p>17 lens of --</p> <p>18 A Can I just correct something? I just want to be</p> <p>19 clear about that. So I'm not sure that I'm</p> <p>20 understanding your question. Can you just</p> <p>21 repeat that last question? I want to make sure</p> <p>22 I answer it precisely.</p> <p>23 Q Sure. Looking at what Ms. Harrington believed</p>	<p style="text-align: right;">55</p> <p>1 Q Have you ever had occasion to look at whether</p> <p>2 something like this would be elevated to raising</p> <p>3 a concern under all of those as you defined it?</p> <p>4 MR. KENISON-MARVIN: Same objection.</p> <p>5 A So I would say no. This particular email is</p> <p>6 dealing with content, and it's not dealing with</p> <p>7 educator actions per se where, you know, so I'm</p> <p>8 having difficulty creating the nexus to the</p> <p>9 statute so I would say I'm not sure I understand</p> <p>10 that.</p> <p>11 Q Let's see if we can take you there.</p> <p>12 A Okay.</p> <p>13 MR. KENISON-MARVIN: Whenever there's a</p> <p>14 good point for a break I have to use the</p> <p>15 restroom.</p> <p>16 (Discussion off the record)</p> <p>17 (Recess taken 11:26 - 11:34 a.m.)</p> <p>18 Q Commissioner, let me ask you again to put before</p> <p>19 you Exhibit 19. You indicated earlier that when</p> <p>20 you talked to the superintendent you conveyed</p> <p>21 various complaints; is that correct?</p> <p>22 A So you're referring to Exhibit 19?</p> <p>23 Q Let's take that one as an example.</p>
<p style="text-align: right;">54</p> <p>1 the Sora application permitted someone to see,</p> <p>2 if she was correct in her analysis, would you</p> <p>3 say that is elevated to the level of raising</p> <p>4 concerns under HB 2?</p> <p>5 MR. KENISON-MARVIN: I'm going to object to</p> <p>6 the extent that that question is different than</p> <p>7 the prior one so it's unclear the prior</p> <p>8 question.</p> <p>9 Q Have you ever looked at a complaint such as is</p> <p>10 in Exhibit 39 through the lens of whether or not</p> <p>11 cause for concern under HB 2 is present?</p> <p>12 MR. KENISON-MARVIN: Objection. Vague.</p> <p>13 A So the responsibility of the agency is to</p> <p>14 incorporate all laws in all of the actions that</p> <p>15 it follows, whether it is, you know, the 193:40</p> <p>16 or whether it is some other law, you know,</p> <p>17 whether it's dealing with student privacy or</p> <p>18 some other matter. So we bring all of those to</p> <p>19 the table. The thing that I was trying to</p> <p>20 clarify --</p> <p>21 Q Before you go further if I may. Bringing all of</p> <p>22 those to the table as you put it.</p> <p>23 A Yes.</p>	<p style="text-align: right;">56</p> <p>1 A So with respect to Exhibit 19, I would have</p> <p>2 expressed the concern about that the parent had</p> <p>3 expressed to me that they were concerned about</p> <p>4 the content of the particular Read-Aloud.</p> <p>5 Q And what would you expect that the</p> <p>6 superintendent would do about that?</p> <p>7 A So I would assume as the superintendent they</p> <p>8 would want to know if they have a parent who is</p> <p>9 upset about something happening in their</p> <p>10 instructional environment so I'm trying to bring</p> <p>11 that to their attention.</p> <p>12 Q And would you expect that the superintendent</p> <p>13 would have a conversation with the teacher?</p> <p>14 A I would expect that the superintendent would do</p> <p>15 whatever is appropriate given the nature of the</p> <p>16 specific complaint.</p> <p>17 MR. BISSONNETTE: I'm accepting Esther</p> <p>18 Dickerson from NEA into the Zoom. She's counsel</p> <p>19 of record as well.</p> <p>20 COMMISSIONER EDELBLUT: Do we need to</p> <p>21 notice her about the recording aspect of this?</p> <p>22 MR. BISSONNETTE: She's aware of it, but I</p> <p>23 can convey to all lawyers that are present,</p>

<p style="text-align: right;">57</p> <p>1 including Attorney Dickinson, just want to make</p> <p>2 sure that everyone is aware that there will be</p> <p>3 no record of the deposition per the agreement of</p> <p>4 counsel.</p> <p>5 COMMISSIONER EDELBLUT: Thank you.</p> <p>6 Q If you will look at the first page of Exhibit 19</p> <p>7 which is also marked as DOE 70 Bates stamped,</p> <p>8 you'll see at the bottom [REDACTED]</p> <p>9 copies not only you but the superintendent; do</p> <p>10 you see that?</p> <p>11 A I see that [REDACTED] has copied a number of people.</p> <p>12 Q Correct. Copies the teacher, correct?</p> <p>13 A I don't know who the teacher is.</p> <p>14 Q Teacher is mentioned in the second line in the</p> <p>15 bottom paragraph. [REDACTED]</p> <p>16 A Okay. So we can stipulate that, that's fine. I</p> <p>17 notice that the Governor as well is copied.</p> <p>18 Q Understood. And do you have any view as to what</p> <p>19 impact that has on the teacher?</p> <p>20 MR. KENISON-MARVIN: Objection. Vague.</p> <p>21 A I don't know the answer to that, but I would</p> <p>22 assume that bringing this to the attention of</p> <p>23 the superintendent would help them to manage</p>	<p style="text-align: right;">59</p> <p>1 MR. KENISON-MARVIN: Objection. Vague,</p> <p>2 compound, legal contention, assumes facts not in</p> <p>3 evidence. You can answer.</p> <p>4 Q Do you know what the remedies are, putting</p> <p>5 complete aside the Code of conduct, what other</p> <p>6 remedies that are capable of being assessed</p> <p>7 under HB 2 for a violation and proceeding</p> <p>8 brought either by an aggrieved party or by the</p> <p>9 Attorney General or anybody else?</p> <p>10 MR. KENISON-MARVIN: Same objections.</p> <p>11 Q I just want to know his knowledge.</p> <p>12 A So I believe you're making reference to PL</p> <p>13 00007, paragraph III. "Any person claiming to</p> <p>14 be aggrieved by a violation of the section</p> <p>15 including the Attorney General may initiate a</p> <p>16 civil action against a school or school district</p> <p>17 in superior court for legal or equitable relief,</p> <p>18 or with the New Hampshire commission for human</p> <p>19 rights as provided under RSA 354-A-34.</p> <p>20 Q Doesn't that relief run against the school?</p> <p>21 Look at Section III. Against a school or a</p> <p>22 School District, correct?</p> <p>23 A Those are the words of that statute. I've not</p>
<p style="text-align: right;">58</p> <p>1 that well.</p> <p>2 Q And what impact would it have on the teacher?</p> <p>3 MR. KENISON-MARVIN: Same objection.</p> <p>4 A So again I would hope that, I have no idea what</p> <p>5 the impact would be on the teacher. My hope</p> <p>6 would be that the teacher would recognize that</p> <p>7 they, too, have a parent who is uncomfortable</p> <p>8 with some of the matters that are taking place</p> <p>9 in the school, and they would work with that</p> <p>10 parent to try to resolve those.</p> <p>11 Q So they would be guided accordingly.</p> <p>12 A Well, now there's a number of different</p> <p>13 guidance, right? So the teacher is aware of it,</p> <p>14 the superintendent is aware of it.</p> <p>15 Q All right. Now, other than the code of conduct</p> <p>16 under what we've termed or I've termed as HB 2,</p> <p>17 if a complaint is filed or a proceeding is</p> <p>18 brought by either the Attorney General or the</p> <p>19 Human Rights Commission, does the remedy include</p> <p>20 any punishment for the teacher or is it only the</p> <p>21 school?</p> <p>22 MR. KENISON-MARVIN: Objection.</p> <p>23 A I'm not sure I understand the question.</p>	<p style="text-align: right;">60</p> <p>1 had to legally interpret this so --</p> <p>2 Q I have no problem with that. It doesn't provide</p> <p>3 any remedy as against the teacher, does it?</p> <p>4 Does it mention the teacher?</p> <p>5 MR. KENISON-MARVIN: Objection. Compound,</p> <p>6 legal contention.</p> <p>7 A It does not mention the teacher.</p> <p>8 Q What impact do you think it has upon the School</p> <p>9 District, the superintendent or the School</p> <p>10 District or the principal of the school when</p> <p>11 there's a complaint that a teacher has done</p> <p>12 something wrong?</p> <p>13 MR. KENISON-MARVIN: Objection. Vague,</p> <p>14 compound.</p> <p>15 A I think it would depend on the nature of the</p> <p>16 complaint.</p> <p>17 Q Have you at any time formed an opinion as to</p> <p>18 whether or not a book, let's take A Good Kind of</p> <p>19 Trouble as an example.</p> <p>20 A So are we on a certain exhibit?</p> <p>21 Q No. I'm not on an exhibit.</p> <p>22 A Okay.</p> <p>23 Q Whether a book raises concerns within the</p>

<p style="text-align: right;">61</p> <p>1 parameters of HB 2?</p> <p>2 MR. KENISON-MARVIN: Objection.</p> <p>3 Q I'll repeat that. Would you repeat it, please,</p> <p>4 Madame Reporter?</p> <p>5 (Requested portion read back by court reporter)</p> <p>6 MR. KENISON-MARVIN: Objection. Vague and</p> <p>7 compound.</p> <p>8 A So again, like the previous example, I'm not</p> <p>9 sure I understand the nexus between specific</p> <p>10 content and as I understand RSA 193:40 which</p> <p>11 talks about, you know, teaching and instruction</p> <p>12 and so on.</p> <p>13 Q See if I understand what you've just said. If a</p> <p>14 teacher reads out loud a paragraph or more of a</p> <p>15 book, do you now understand the context?</p> <p>16 A I know what reading out loud means so I'm not</p> <p>17 sure I understand the question.</p> <p>18 Q Have you ever formed an opinion as to whether</p> <p>19 any material that, in my first example, a</p> <p>20 teacher reads automatic out loud or is asserted</p> <p>21 to have read out loud from a book rises to a</p> <p>22 level of concern under HB 2?</p> <p>23 MR. KENISON-MARVIN: Objection. Compound,</p>	<p style="text-align: right;">63</p> <p>1 I'm trying to understand what you're -- you've</p> <p>2 created this nexus, and I'm not sure where</p> <p>3 you're going.</p> <p>4 Q I have no problem with that.</p> <p>5 A Okay.</p> <p>6 Q I'll just ask you this question.</p> <p>7 Is it your understanding just reading the</p> <p>8 content, any content you'd like, stuff that Ms.</p> <p>9 Harrington called to your attention, reading it</p> <p>10 out loud is not teaching; is that what your</p> <p>11 position is?</p> <p>12 A So it's not that it's not teaching. You have to</p> <p>13 go to A, B, C and D so you would say not</p> <p>14 teaching A, if that teaching includes that one's</p> <p>15 age, sex, gender identity, sexual orientation,</p> <p>16 race, creed, color, marital status, familial</p> <p>17 status, mental or physical disability, religion</p> <p>18 or national origin is inherently superior to</p> <p>19 people of another age, sex, gender identity,</p> <p>20 sexual orientation, race, creed, color, marital</p> <p>21 status, familial status, mental or physical</p> <p>22 disability, religion or national origin as an</p> <p>23 example, so if that is what is being taught, but</p>
<p style="text-align: right;">62</p> <p>1 vague.</p> <p>2 A So it would be incomplete information to make</p> <p>3 that determination because a teacher could read</p> <p>4 many different parts of content that are not</p> <p>5 connected to as I understand 193 about the</p> <p>6 activities of the educator.</p> <p>7 Q What if the book is in the curriculum?</p> <p>8 A So I'm not sure I understand. What is the</p> <p>9 question?</p> <p>10 Q The question is simply this. Have you ever</p> <p>11 formed an opinion as to whether any content read</p> <p>12 aloud from a book by a teacher in a classroom</p> <p>13 rises to the level of concern with respect to HB</p> <p>14 2?</p> <p>15 A So with all due respect, content is not the</p> <p>16 subject of the purported HB 2 or 193:40. The</p> <p>17 activities, as I understand the law, you know,</p> <p>18 no pupil in any public school in this state</p> <p>19 shall be taught, instructed, inculcated, or</p> <p>20 compelled to express belief in or support for</p> <p>21 one or more of the following.</p> <p>22 So an educator could use a wide variety of</p> <p>23 content that doesn't then violate A, B, C or D.</p>	<p style="text-align: right;">64</p> <p>1 content itself doesn't do that. Content is</p> <p>2 neutral relative to the actions.</p> <p>3 Q So you bifurcate the term "teaching" from the</p> <p>4 subject matter of the teaching. Is that what</p> <p>5 you're saying?</p> <p>6 A It is possible that someone could use content,</p> <p>7 that the content itself is potentially</p> <p>8 problematic relative to this statute, and the</p> <p>9 teacher may use that content to demonstrate how</p> <p>10 it's inappropriate to, you know, to assert that</p> <p>11 one's, you know, age, sex is inherently superior</p> <p>12 to another.</p> <p>13 So in other words, the content is not, I'm</p> <p>14 having trouble creating nexus to the content.</p> <p>15 Q Would teaching the subject of affirmative action</p> <p>16 violate HB 2 under that hypothesis?</p> <p>17 MR. KENISON-MARVIN: Objection.</p> <p>18 A You'd have to give me more context around the</p> <p>19 teaching of affirmative action.</p> <p>20 Q Affirmative Action is a wonderful thing now. Is</p> <p>21 that good?</p> <p>22 A So what I would --</p> <p>23 MR. KENISON-MARVIN: Same objection. And</p>

<p style="text-align: right;">65</p> <p>1 vague. You can answer.</p> <p>2 A No pupil in any public school of this state</p> <p>3 shall be taught, instructed, inculcated or</p> <p>4 compelled to express a belief in or support for</p> <p>5 any one or more of the following. That one's,</p> <p>6 you know, affirmative action, so that one's</p> <p>7 race, you know, is inherently superior to the</p> <p>8 people of another race, and so the adjudication</p> <p>9 of that is something that would be made by the</p> <p>10 Human Rights Commission.</p> <p>11 Q Putting aside the adjudication, I'm seeking your</p> <p>12 opinion. Would a teacher saying we need to have</p> <p>13 more affirmative action because it is a good</p> <p>14 thing be raised to the level of concern under HB</p> <p>15 2?</p> <p>16 A I would need to have more context than the</p> <p>17 simple statement that you provided to me. Is</p> <p>18 the context of the totality of the pedagogical</p> <p>19 instruction one that teaches, instructs,</p> <p>20 inculcates, compels, express belief in or</p> <p>21 support for that one's race is inherently</p> <p>22 superior.</p> <p>23 So simply Title IX itself, at least my</p>	<p style="text-align: right;">67</p> <p>1 rioting, looting, burning down buildings. It</p> <p>2 also made our daughter very uncomfortable and</p> <p>3 scared," unquote.</p> <p>4 Would you think that, did you form any</p> <p>5 opinion as to whether or not that would raise a</p> <p>6 level of concern under HB 2?</p> <p>7 A So again --</p> <p>8 MR. KENISON-MARVIN: Objection. Vague.</p> <p>9 Compound. You can answer.</p> <p>10 A My response is not to adjudicate whether or not</p> <p>11 they are violations of the particular law. When</p> <p>12 I read that paragraph, and even just reading it</p> <p>13 now, I saw a number of concerns that the parent</p> <p>14 had with respect to their child, and so that is</p> <p>15 really what I focused in on in terms of I have a</p> <p>16 child who's in school who is scared relative to</p> <p>17 some of that content and wanted to make sure</p> <p>18 that we try to support that child.</p> <p>19 Q Is it your testimony that when you read</p> <p>20 something like this you exclude from your</p> <p>21 consideration the provisions of HB 2?</p> <p>22 MR. KENISON-MARVIN: Objection. Vague.</p> <p>23 A So my responsibility is not to adjudicate.</p>
<p style="text-align: right;">66</p> <p>1 limited understanding of it, does not state that</p> <p>2 one race is inherently superior to another race</p> <p>3 is my understanding of that. So I would need to</p> <p>4 have more context to understand the actions of</p> <p>5 the educator.</p> <p>6 Q I'd like to take you for a moment to just jump</p> <p>7 ahead. Let me take you back to Exhibit 19 and</p> <p>8 to what I believe is the third page of that</p> <p>9 document. First word on that page being trust.</p> <p>10 A Okay.</p> <p>11 Q And take you down to the third paragraph?</p> <p>12 A Which begins with regarding?</p> <p>13 Q Regarding.</p> <p>14 A Okay.</p> <p>15 Q I'd ask you to read that, please.</p> <p>16 A Okay. So your question?</p> <p>17 Q Question, turning to that paragraph starting</p> <p>18 with the word "regarding," let me just read two</p> <p>19 sentences I'm interested in. Regarding the</p> <p>20 book, quote, "A Good Kind of Trouble," it is a</p> <p>21 terrible book that shames, quote, "white"</p> <p>22 children into thinking they are the oppressors</p> <p>23 in society. This book talks about gunshots,</p>	<p style="text-align: right;">68</p> <p>1 Q I didn't ask you about adjudicating. Put aside</p> <p>2 adjudicating. Is it your position that when you</p> <p>3 read something like this, material I just</p> <p>4 quoted, you exclude from your consideration any</p> <p>5 concern with respect to HB 2?</p> <p>6 MR. KENISON-MARVIN: Same objection.</p> <p>7 A So again, when I read a paragraph like this, my</p> <p>8 concern is all of the statutes which we are</p> <p>9 responsible for administering.</p> <p>10 Q Okay. That's fine. I'd like to take you now to</p> <p>11 a copy of your OpEd piece captioned, "Teach</p> <p>12 children about racism, not to be racists." All</p> <p>13 right? Exhibit 4. This is a copy of an OpEd</p> <p>14 piece in the Union Leader. Correct? And you</p> <p>15 wrote that; is that correct? That's the</p> <p>16 question. Please read it.</p> <p>17 A So my question --</p> <p>18 Q I have a clearer copy of the text if that's what</p> <p>19 you want.</p> <p>20 A I have to put my glasses on for this one because</p> <p>21 it's so tiny.</p> <p>22 Q I have one that was taken from the online --</p> <p>23 A That's okay. I can read it here. I've got my</p>

<p style="text-align: right;">69</p> <p>1 glasses on.</p> <p>2 Q Sir, this is a copy of it, if this helps you.</p> <p>3 A No. This is fine. I can read it right here.</p> <p>4 Okay.</p> <p>5 Q I will take you to the paragraph that is Exhibit</p> <p>6 4, paragraph 10.</p> <p>7 A Okay.</p> <p>8 Q Starts with the words, In Ibram Kendi's "How to</p> <p>9 be an Antiracist."</p> <p>10 A That's correct.</p> <p>11 Q Do you see that paragraph, sir?</p> <p>12 A I do.</p> <p>13 Q Would you say reading just the following would</p> <p>14 raise concerns for you under HB 2. Quote, "In</p> <p>15 Ibram Kendi's "How to Be an Antiracist," a</p> <p>16 prominent text in support of Critical Race</p> <p>17 Theory, he states, quote, "the only remedy to</p> <p>18 racist discrimination is antiracist</p> <p>19 discrimination. The only remedy to past</p> <p>20 discrimination is present discrimination...The</p> <p>21 only remedy to present discrimination is future</p> <p>22 discrimination," close the quote within the</p> <p>23 quote and close the main quote.</p>	<p style="text-align: right;">71</p> <p>1 A This is a book that is used in schools in New</p> <p>2 Hampshire, and even if a teacher were to focus</p> <p>3 on the book, the question would be you need the</p> <p>4 broader context. How is it that the teacher is</p> <p>5 focusing on that particular passage. If the</p> <p>6 teacher were to focus on that passage with the</p> <p>7 idea that we do not want to discriminate against</p> <p>8 individuals based upon their age, sex, gender</p> <p>9 identity, sexual orientation, race, creed,</p> <p>10 color, marital status, familial status, mental</p> <p>11 and physical disability, religion or natural</p> <p>12 origin, it might be a very compelling lesson.</p> <p>13 Q And would that disclaimer that you have just</p> <p>14 quoted from be sufficient to take it out of your</p> <p>15 areas of concern under HB 2?</p> <p>16 MR. KENISON-MARVIN: Same objections.</p> <p>17 A I'm not sure I understand the question.</p> <p>18 Q Very simple. If the teacher were to recite just</p> <p>19 the first material I quoted without in any way</p> <p>20 adding the material you just quoted, would that</p> <p>21 raise a matter of concern?</p> <p>22 A So --</p> <p>23 MR. KENISON-MARVIN: Same objection.</p>
<p style="text-align: right;">70</p> <p>1 If a teacher were to teach that, would that</p> <p>2 raise concerns under HB 2?</p> <p>3 MR. KENISON-MARVIN: Objection. Vague.</p> <p>4 Legal contention.</p> <p>5 A Again, depending on how the teacher was teaching</p> <p>6 content. Content itself. Ibram Kendi's</p> <p>7 material itself is not the subject as I</p> <p>8 understand it to 193:40. If the teacher, you</p> <p>9 know, believes that we should teach students to</p> <p>10 discriminate against others based on, from</p> <p>11 193:40-I, you know, age, sex, gender identity,</p> <p>12 sexual orientation, race, creed, color, then I</p> <p>13 think that that would be a problem.</p> <p>14 Again, I don't have adjudicatory</p> <p>15 responsibility for that so these are my</p> <p>16 opinions, but the intent of the OpEd is to say</p> <p>17 we do not want discrimination in our New</p> <p>18 Hampshire schools.</p> <p>19 Q And if a teacher were to say I want you to read</p> <p>20 that book and focus on that paragraph, would</p> <p>21 that raise concerns?</p> <p>22 A So again --</p> <p>23 MR. KENISON-MARVIN: Objection.</p>	<p style="text-align: right;">72</p> <p>1 A I would need to see it in its complete context.</p> <p>2 Q That's the complete context.</p> <p>3 A There is no circumstance where that's the</p> <p>4 context.</p> <p>5 Q That's it.</p> <p>6 A So the purpose of the OpEd is that we want to</p> <p>7 teach students about racism but not to be</p> <p>8 racists. So the determination of whether or not</p> <p>9 a teacher is discriminating against someone or</p> <p>10 teaching students that one group is inherently</p> <p>11 superior to another would be a determination by</p> <p>12 the Human Rights Commission.</p> <p>13 Q Now my question. Please read it back.</p> <p>14 (Requested portion read back by court reporter)</p> <p>15 Q I repeat my question.</p> <p>16 MR. KENISON-MARVIN: Same objection.</p> <p>17 A I just think it's a fallacious hypothetical.</p> <p>18 Q Forget whether it's fallacious, wrong, anything</p> <p>19 you like. I'm asking you would it raise concern</p> <p>20 in your mind.</p> <p>21 A I can't adjudicate it because I don't have</p> <p>22 enough information.</p> <p>23 Q That's all the information there is.</p>

<p style="text-align: right;">73</p> <p>1 A I can't adjudicate it then. I don't have enough</p> <p>2 information.</p> <p>3 Q So you would not form an opinion based on that?</p> <p>4 A I don't believe that I would ever be faced with</p> <p>5 a set of circumstances that are limited to one</p> <p>6 sentence out of context.</p> <p>7 Q Are you incapable of forming an opinion based on</p> <p>8 that?</p> <p>9 A No. I think it's very easy to form opinions</p> <p>10 about things, and my opinion is that you have</p> <p>11 provided insufficient context in your</p> <p>12 hypothetical to be able to form an accurate</p> <p>13 opinion.</p> <p>14 Q I didn't ask you whether it was accurate or</p> <p>15 inaccurate. I asked you if you could form an</p> <p>16 opinion.</p> <p>17 A I'm not able to form an opinion based on that</p> <p>18 limited --</p> <p>19 Q Fair enough. Can a teacher say they agree with</p> <p>20 Kendi?</p> <p>21 A I don't understand why they would not be able to</p> <p>22 agree with Kendi. The question that would come</p> <p>23 back is are they teaching, instructing,</p>	<p style="text-align: right;">75</p> <p>1 asking --</p> <p>2 A So I don't have the context. So a teacher may</p> <p>3 say I agree with Kendi as a rhetorical device to</p> <p>4 stimulate conversation among students.</p> <p>5 Q So you would have no problem then, for example,</p> <p>6 in allowing a teacher to put forward -- hear my</p> <p>7 question, please. You would have no problem</p> <p>8 with a teacher putting forward Mr. Kendi's book</p> <p>9 and focusing on that paragraph.</p> <p>10 MR. KENISON-MARVIN: Objection. Vague.</p> <p>11 A So the teacher themselves would be in the best</p> <p>12 position to know if they are teaching,</p> <p>13 instructing, inculcating or compelling to</p> <p>14 express a belief in or support for any one or</p> <p>15 more of the following, as I've repeated, that</p> <p>16 one's age, you know or this immutable</p> <p>17 characteristic is inherently superior to another</p> <p>18 one. The teacher themselves have clarity of the</p> <p>19 action that they are doing at that time. I have</p> <p>20 a hypothetical construct that is really limited.</p> <p>21 Q Let me ask you this question. Do you have any</p> <p>22 concern that Kendi's book with all of the</p> <p>23 content in it is shown to students in class?</p>
<p style="text-align: right;">74</p> <p>1 inculcating or compelling to express belief in</p> <p>2 or support for any one or more of the following.</p> <p>3 That one's age, sex, gender identity, sexual</p> <p>4 orientation, race, creed, color, marital status,</p> <p>5 any of these immutable characteristics is</p> <p>6 inherently superior to those of another. That</p> <p>7 is the salient question.</p> <p>8 Q No, it isn't, sir. My question is very simply</p> <p>9 this.</p> <p>10 Can a teacher say I agree with the</p> <p>11 quotation by Kendi that is as follows and no</p> <p>12 more. "How to Be an Antiracist, a prominent</p> <p>13 text in support of Critical Race Theory states</p> <p>14 the only remedy to racist discrimination is</p> <p>15 antiracist discrimination. The only remedy to</p> <p>16 past discrimination is present discrimination.</p> <p>17 The only remedy to present discrimination is</p> <p>18 future discrimination," unquote. Can a teacher</p> <p>19 say I agree with that premise?</p> <p>20 MR. KENISON-MARVIN: Same objection.</p> <p>21 A So there's insufficient information to</p> <p>22 adjudicate that.</p> <p>23 Q I'm not asking you to adjudicate, sir. I'm just</p>	<p style="text-align: right;">76</p> <p>1 A So it would depend on the context of how that</p> <p>2 material was used in the class.</p> <p>3 Q Read the book. That's the context. The sole</p> <p>4 context. I'd like to you read the book, and we</p> <p>5 will discuss it.</p> <p>6 A So now there's more context. It would depend on</p> <p>7 what that discussion is, and I would go back to</p> <p>8 the statute, and I would say that the educator</p> <p>9 themselves would have clarity if they are</p> <p>10 teaching, instructing, inculcating or compelling</p> <p>11 to express a belief in or support for one or</p> <p>12 more of these following things.</p> <p>13 Q Have you ever read the book Stabbed?</p> <p>14 A I have not.</p> <p>15 Q Would you have any concern if a teacher said I'd</p> <p>16 like you as an extracurricular activity to read</p> <p>17 anyone of the following books: Stamped, Kendi's</p> <p>18 How to Be an Antiracist, or the book that I</p> <p>19 mentioned earlier, A Good Kind of Trouble.</p> <p>20 Would you have any problem with that? Read any</p> <p>21 one of those books in your free time.</p> <p>22 A So again --</p> <p>23 MR. KENISON-MARVIN: Objection. Compound.</p>

<p style="text-align: right;">77</p> <p>1 A The jurisdiction of the Department is not on the</p> <p>2 curricular materials in the school. Right? So</p> <p>3 that's not in the scope of my responsibility to</p> <p>4 administer the various materials that are used</p> <p>5 in curriculum.</p> <p>6 Q If a complaint came in saying that the Kendi</p> <p>7 book, the Stamped book, or the A Good Kind of</p> <p>8 Trouble have been listed by a teacher as books</p> <p>9 that kids should read in their free time, would</p> <p>10 you have any problem in terms of how to handle</p> <p>11 that complaint?</p> <p>12 A Again, the curricular materials that a school is</p> <p>13 choosing are not within the domain of the</p> <p>14 Department of Education.</p> <p>15 Q Then why is it that you went to the</p> <p>16 superintendent and talked to them about A Good</p> <p>17 Kind of Trouble?</p> <p>18 A Because they had a parent who was upset, and I</p> <p>19 would assume if I were a superintendent and I</p> <p>20 had an upset parent that I would want to know</p> <p>21 about that trying to help them support their</p> <p>22 families.</p> <p>23 Q But you just said that's not within your domain.</p>	<p style="text-align: right;">79</p> <p>1 that's a very good book. In fact, I think I</p> <p>2 shared with you earlier the conversation that I</p> <p>3 had with the superintendent, two assistant</p> <p>4 superintendents and their principal, and I</p> <p>5 expressed my perspective to them about the</p> <p>6 literary quality of the particular book, but it</p> <p>7 remains their determination whether or not</p> <p>8 they're going to use that book. So that is</p> <p>9 purely an opinion that I have shared with them.</p> <p>10 Q That's exactly what I want. And now tell me, if</p> <p>11 you will, do you think that would have any</p> <p>12 persuasive impact upon them?</p> <p>13 A I don't know the answer to that.</p> <p>14 Q Do you think it would have any persuasive impact</p> <p>15 upon the teacher if that were communicated by</p> <p>16 the superintendent to the teacher the</p> <p>17 Commissioner of Education has said he doesn't</p> <p>18 think that's a very good book.</p> <p>19 MR. KENISON-MARVIN: Objection. Vague.</p> <p>20 Calls for speculation.</p> <p>21 A I think it would depend on how the</p> <p>22 superintendent communicated that to the teacher.</p> <p>23 Q You just said the Commissioner of Education has</p>
<p style="text-align: right;">78</p> <p>1 MR. KENISON-MARVIN: Objection.</p> <p>2 A What is within the domain of the Department is</p> <p>3 to make sure that the system is able to function</p> <p>4 well, and part of functioning well is to make</p> <p>5 sure that the constituencies are being served.</p> <p>6 So as I support my superintendents, if I</p> <p>7 have a complaint from a parent, I bring that to</p> <p>8 the attention of the superintendent so they can</p> <p>9 manage it appropriately.</p> <p>10 Q And that's because you believe it's within your</p> <p>11 responsible area as the Commissioner of</p> <p>12 Education, correct?</p> <p>13 A To support them, correct.</p> <p>14 Q And so in doing that, do you in any manner, way,</p> <p>15 shape or form tell them that there are issues</p> <p>16 concerning the prescription of any of the three</p> <p>17 books I've just mentioned?</p> <p>18 A So --</p> <p>19 MR. KENISON-MARVIN: Objection. Vague.</p> <p>20 Legal contention. You can answer.</p> <p>21 A I mean, if I have a conversation with the</p> <p>22 superintendent, in a particular conversation</p> <p>23 hypothetically I may express like I don't think</p>	<p style="text-align: right;">80</p> <p>1 told us that's not a very good book. Do you</p> <p>2 think that would have a persuasive impact on the</p> <p>3 teacher?</p> <p>4 MR. KENISON-MARVIN: Same objection.</p> <p>5 Vagueness, speculation. You can answer.</p> <p>6 A So I will speculate we have very capable</p> <p>7 superintendents in the State of New Hampshire</p> <p>8 who would take a piece of information like that</p> <p>9 and they would manage it well to provide</p> <p>10 constructive feedback to any of their educators.</p> <p>11 Q Thank you. Give me just two minutes if I may.</p> <p>12 One more question about this OpEd. Did</p> <p>13 anybody assist you or work with you in the</p> <p>14 drafting of Exhibit 4?</p> <p>15 A I don't have any specific recollection, but</p> <p>16 normally when I'm writing an OpEd it could be</p> <p>17 that my Public Information Officer would be</p> <p>18 assisting me and proofreading it.</p> <p>19 Q Anyone else?</p> <p>20 A I don't recall.</p> <p>21 Q Now, sir, I would like to show you a document I</p> <p>22 don't think has yet been marked.</p> <p>23 I ask you to take a look at Exhibit 14,</p>

<p style="text-align: right;">81</p> <p>1 please.</p> <p>2 Now, the second page of Exhibit 14 is an</p> <p>3 OpEd that you wrote captioned Education's Sacred</p> <p>4 Trust.</p> <p>5 A That's correct.</p> <p>6 Q If you prefer I can give you a blownup version</p> <p>7 unless you can read that with ease.</p> <p>8 A I'll put my glasses on. Okay. I've read the</p> <p>9 OpEd. Not the attachments.</p> <p>10 Q Did anyone assist you in writing that OpEd?</p> <p>11 A Again, it may be that my Public Information</p> <p>12 Officer reviewed a draft of it, but otherwise I</p> <p>13 don't know.</p> <p>14 Q Anyone else? You don't remember.</p> <p>15 A Not that I recall.</p> <p>16 Q Now, you'll see that in that document there is a</p> <p>17 link to some external materials. Correct?</p> <p>18 A Correct.</p> <p>19 Q Who compiled those materials?</p> <p>20 A I did.</p> <p>21 Q Pardon me?</p> <p>22 A I did.</p> <p>23 Q Okay. And did you read them before you referred</p>	<p style="text-align: right;">83</p> <p>1 Q You saw, of course, that there are photographs</p> <p>2 in there, correct?</p> <p>3 A Correct. In the exhibit.</p> <p>4 Q And did you ask whether consents had been</p> <p>5 obtained from the people who were photographed?</p> <p>6 A I did not.</p> <p>7 Q I'm going to show you a document that's been</p> <p>8 Bates marked DOE 07053, and ask if you have seen</p> <p>9 it before, and then I'm going to ask that it be</p> <p>10 marked as an exhibit.</p> <p>11 MR. BISSONNETTE: For simplicity, this has</p> <p>12 been previously marked as Exhibit 31.</p> <p>13 Q Have you seen that document before?</p> <p>14 A Let me just read it real quickly.</p> <p>15 Q For the record, I said 053 so it's 054.</p> <p>16 Look at Exhibit 32, Nate. I'm going to</p> <p>17 give you 32 as well.</p> <p>18 MR. KENISON-MARVIN: Would you like me to</p> <p>19 hand him 32?</p> <p>20 MR. MOERDLER: Yes.</p> <p>21 MR. KENISON-MARVIN: This one is marked</p> <p>22 yellow, but all the others are gray. It's not</p> <p>23 the --</p>
<p style="text-align: right;">82</p> <p>1 to them?</p> <p>2 A I did.</p> <p>3 Q And you referred to those as, quote,</p> <p>4 "exemplifying," quote, "actual instructional</p> <p>5 material from New Hampshire schools that parents</p> <p>6 have identified as conflicting with their</p> <p>7 values."</p> <p>8 A That's correct.</p> <p>9 Q Now, what I would ask you is a couple of very</p> <p>10 quick preliminary questions. Where were the</p> <p>11 materials obtained by you?</p> <p>12 A So generally they would have come into me via an</p> <p>13 email or perhaps they came in directly to Rich</p> <p>14 or Diana, and they were brought to my attention</p> <p>15 or they may have come in to Stephen Berwick or</p> <p>16 someone else in the organization. So some place</p> <p>17 here they came to my attention.</p> <p>18 Q And did you ask whether consents had been</p> <p>19 obtained from either the person who photographed</p> <p>20 the photographs that are part of it or any of</p> <p>21 the materials that are in there to</p> <p>22 republication?</p> <p>23 A I don't believe so.</p>	<p style="text-align: right;">84</p> <p>1 MR. BISSONNETTE: Yes. The reason is I</p> <p>2 copied that internally, not externally, because</p> <p>3 it is marked Confidential under Protective</p> <p>4 Order.</p> <p>5 (Discussion off the record)</p> <p>6 MR. BISSONNETTE: 32 is marked</p> <p>7 confidential. Not 31. I comply with protective</p> <p>8 orders.</p> <p>9 A So your question.</p> <p>10 Q All right. Now, my first question is did you</p> <p>11 see this document before?</p> <p>12 A 32?</p> <p>13 Q 31.</p> <p>14 A I have seen 31.</p> <p>15 Q And 32 is the attachments to 31.</p> <p>16 A Sorry. 32 is?</p> <p>17 Q Yes.</p> <p>18 A So not all of 32.</p> <p>19 Q I believe --</p> <p>20 A 32 has an email that's not associated with it so</p> <p>21 what you're asserting is the attachments to 31</p> <p>22 are pages 2 through the end but not the first</p> <p>23 page of 32 because that's something different.</p>

[illegible]

87

1 [REDACTED]

2 A There's topic dividers in there, and the topic

3 that you initially referred to was Topic One and

4 now we're on Topic Five which begins on page PL

5 00714.

6 Q So let me take this piece by piece if I may.

7 A Okay.

8 Q That's the only way I can do it rationally. You

9 have seen Exhibit 31 before, correct?

10 A 31, I've now read that and I believe I've seen

11 31 before, yes.

12 Q And you have seen Exhibit 32 before.

13 A I have not seen Exhibit 32. I've seen the

14 attachments to Exhibit 32.

15 Q And you had not previously seen 32.

16 A No.

17 Q If you will look at Exhibit 32 so we complete

18 it, other than the -- may I see 32 for a moment,

19 please? Other than the top 2, 4, 6, 8 lines, it

20 is Exhibit 31. Is it not?

21 A It's not because Exhibit 31 includes content at

22 the top as well that's not part --

23 Q That's what I said. That's what I said.

1 A Actually you referenced the header at the top of
2 32 but Exhibit 31 similarly has information.
3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
7 Q Right.
8 A The content of that email appears to be --
9 Q Included in.
10 A -- consistent between Exhibits 31 and 32.
11 Q And so are the attachments, are they not?
12 A So there are no attachments on 31. There are
13 just references to attachments.
14 Q Right. Okay.
15 MR. MOERDLER: Nate, I'm going to ask that
16 you produce for us a copy of the full text of
17 [REDACTED]
[REDACTED]. That means including the exhibits,
19 not just the references.
20 MR. KENISON-MARVIN: 31 exhibits?
21 MR. MOERDLER: Yes.
22 MR. KENISON-MARVIN: I'll look at and see
23 if that's been done or not. I'll take your

<p>89</p> <p>1 request. I will represent to you that I will</p> <p>2 look. I can do it during a break as well.</p> <p>3 MR. MOERDLER: Okay.</p> <p>4 MR. BISSONNETTE: I didn't mean to</p> <p>5 interrupt. I can just say that I'm on</p> <p>6 Relativity right now and have looked at the</p> <p>7 documents after Bates stamped DOE 7054 in</p> <p>8 Exhibit 31 and just haven't seen the exhibits.</p> <p>9 MR. KENISON-MARVIN: I'll take a look. I</p> <p>10 can do it now. I can do it during a break later</p> <p>11 and see.</p> <p>12 MR. MOERDLER: Let's do it so we know we're</p> <p>13 talking about the same things as apples and</p> <p>14 apples.</p> <p>15 A The other thing that I will stipulate is that</p> <p>16 you put on the record there was an email from</p> <p>17 [REDACTED] to Commission Edelblut, and that's not</p> <p>18 the case.</p> <p>19 Q Say that again?</p> <p>20 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>91</p> <p>1 going to ask that you mark as a separate number</p> <p>2 a copy of a communication from DOE</p> <p>3 Communications Office to Commissioner Edelblut</p> <p>4 with a series of 11 attachments as a separate</p> <p>5 exhibit; is that correct? Is that stipulated?</p> <p>6 Those are the attachments.</p> <p>7 MR. KENISON-MARVIN: That the document that</p> <p>8 you're holding, it has, the email on top is the</p> <p>9 email that is document --</p> <p>10 Q This document is complete; is that correct?</p> <p>11 Both as to the document itself and the</p> <p>12 attachments?</p> <p>13 MR. KENISON-MARVIN: It has all of these</p> <p>14 attachments.</p> <p>15 MR. MOERDLER: Correct.</p> <p>16 MR. BISSONNETTE: Is that, this document,</p> <p>17 Exhibit 40?</p> <p>18 (Exhibit 40 marked as an exhibit)</p> <p>19 MR. MOERDLER: Mr. Attorney General,</p> <p>20 Mr. Bissonnette, we are agreed, are we not, that</p> <p>21 Exhibit 40 is subject to the same protective</p> <p>22 order that has previously been entered into</p> <p>23 respecting confidentiality of documents.</p>
<p>90</p> <p>1 [REDACTED]</p> <p>2 A Thank you. Just trying to be precise.</p> <p>3 Q I stand corrected.</p> <p>4 A If you wanted to stipulate that these may be the</p> <p>5 attachments --</p> <p>6 MR. KENISON-MARVIN: I want to take an</p> <p>7 opportunity to look and see what's going on.</p> <p>8 MR. MOERDLER: I'm going to make the</p> <p>9 assumption that they are, although they haven't</p> <p>10 been produced, just for simplicity's sake, all</p> <p>11 right, without prejudice to you're saying they</p> <p>12 weren't attached, all right?</p> <p>13 MR. KENISON-MARVIN: If you're comfortable</p> <p>14 going forward on that basis. I'm also happy to</p> <p>15 take a look now and get you an answer.</p> <p>16 MR. MOERDLER: Go ahead.</p> <p>17 MR. KENISON-MARVIN: If we want to go off</p> <p>18 the record.</p> <p>19 Q Sure.</p> <p>20 (Lunch recess taken 12:31 - 1:15 p.m.)</p> <p>21 Q Madam reporter, I'm going to mark a document,</p> <p>22 portions of which have previously been referred</p> <p>23 to albeit they were not complete. So I'm now</p>	<p>92</p> <p>1 MR. KENISON-MARVIN: Yes, I'll agree with</p> <p>2 that. Thank you for bringing it up.</p> <p>3 MR. BISSONNETTE: Yes. Plaintiffs</p> <p>4 Philibotte and Mejia are on board.</p> <p>5 Q Commissioner, I ask you to place before you</p> <p>6 Exhibit 40, and I ask you to note a couple of</p> <p>7 things. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>17 Q Okay. Now, did you at some point become aware</p> <p>18 of Exhibit 32?</p> <p>19 A So the first time I've seen this is today.</p> <p>20 Q Were you aware there was such a document without</p> <p>21 seeing the document itself?</p> <p>22 A I was not aware of it.</p> <p>23 Q [REDACTED]</p>

<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 Now, would you tell me, your OpEd was</p> <p>5 written in April of 2021, correct?</p> <p>6 A That would be Exhibit 4? What exhibit am I</p> <p>7 referring to?</p> <p>8 Q It's 14.</p> <p>9 A Okay. 14. Got it. Okay.</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 A So your question is when was that OpEd written?</p> <p>13 Q I didn't ask the question.</p> <p>14 A Oh. You had mentioned a date.</p> <p>15 Q I know.</p> <p>16 A I'm trying to understand what the question was.</p> <p>17 Q When was that OpEd written? I have April 15,</p> <p>18 2022.</p> <p>19 A That's when it looks like it was released on the</p> <p>20 Department of Education's website. I don't know</p> <p>21 when I was actually published.</p> <p>22 Q Okay. It was separately published in the Union</p> <p>23 Leader at some point?</p>	<p>93</p> <p>95</p> <p>1 MR. MOERDLER: Nate, for the record, would</p> <p>2 you please check the files to see if there's any</p> <p>3 responsive material at all to Exhibit 40? In</p> <p>4 other words, when the Commissioner received it,</p> <p>5 what did he do with it, are there any documents,</p> <p>6 I'm looking for documents.</p> <p>7 MR. KENISON-MARVIN: I understand. I'll</p> <p>8 look.</p> <p>9 MR. MOERDLER: Is it logged, was it sent to</p> <p>10 Farrell, if it was sent to somebody, did that</p> <p>11 person report? On his end it ends with the</p> <p>12 receipt here.</p> <p>13 MR. KENISON-MARVIN: Understood. I'll</p> <p>14 look, and there are privilege logs forthcoming.</p> <p>15 That's been something as we try to work through</p> <p>16 discovery that we are getting to them as we've</p> <p>17 indicated as quickly as we can.</p> <p>18 MR. MOERDLER: Do you have a sense it was</p> <p>19 privileged? Farrell's?</p> <p>20 MR. KENISON-MARVIN: There have been, there</p> <p>21 are documents that are being withheld from being</p> <p>22 delivered on process privileged grounds with</p> <p>23 respect to communications amongst Department</p>
<p>94</p> <p>1 A Correct.</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 Q Fine. Now, would you tell us what you did with</p> <p>17 Exhibit Number 40 upon receipt?</p> <p>18 A I don't recall exactly. I imagine that I</p> <p>19 somehow got the content of that information to</p> <p>20 Rich Farrell.</p> <p>21 Q Did you get any report from Rich Farrell with</p> <p>22 respect to that document?</p> <p>23 A If I did, I don't recall what that was.</p>	<p>96</p> <p>1 members about deliberating with respect to</p> <p>2 issues that the Department is deciding. So that</p> <p>3 will all be logged. I can't tell you right now</p> <p>4 if there's one that relate to this series of</p> <p>5 emails, but I can look specifically.</p> <p>6 Q Let me ask a question. If you object, you'll</p> <p>7 object.</p> <p>8 MR. KENISON-MARVIN: Sure.</p> <p>9 Q Do you recall either your communicating or your</p> <p>10 asking someone else to communicate with</p> <p>11 Mr. [REDACTED] that he should communicate with</p> <p>12 HRC?</p> <p>13 A So I don't, I don't have any recollection of</p> <p>14 communicating directly with Mr. [REDACTED] on this</p> <p>15 matter.</p> <p>16 Q Do you have any recollection of having asked</p> <p>17 somebody else to do so?</p> <p>18 A And I don't have any recollection of asking</p> <p>19 somebody else to do so.</p> <p>20 Q Do you have any recollection somebody else did</p> <p>21 so even without asking you?</p> <p>22 A I don't know if they have or have not.</p> <p>23 Q Just completing the circle.</p>

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1 notes that they have had a communication with a
2 superintendent and/or a principal concerning
3 these kind of matters?

4 A It would depend upon the nature of the matter.

5 Q Who would do that?

6 A So it would depend on who is having the
7 conversation with the superintendent and what
8 the nature of the conversation was.

9 MR. MOERDLER: Nate, if there have any
10 communication -- (cell phone ringing).

11 (Discussion off the record)

12 MR. MOERDLER: Are there are any records
13 that show that there were any communications, A,
14 within the Department of this, this being 40; B,
15 whether there are any communications within the
16 Department showing who they communicated with in
17 the school or the school district. If you wish
18 to assert some form of privilege as to that I
19 would like to at least know that such occurred
20 without putting the comment on the content.

21 MR. KENISON-MARVIN: I can represent to you
22 that in review of the documents, to the extent
23 there was a communication not within the

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1 Department but a communication out to a school
2 official, documents have not been withheld. We
3 have limited our search to the email
4 communications of the individuals we'd
5 identified at the beginning of discovery. So to
6 the extent there would be communications that
7 wouldn't be within the emails of some other
8 individual, I can't rule out that possibility a
9 hundred percent, but to the extent there's a
10 communication that any of the individuals that
11 we've agreed to search, I can represent that to
12 the extent one of those individuals had a
13 communication regarding this matter with an
14 individual outside of the Department, I wouldn't
15 have withheld that document on the basis of
16 privilege.

17 MR. MOERDLER: And could you just check if
18 there has been any communication with Messrs.
19 Farrell and Fenton in any way on this document?

20 MR. KENISON-MARVIN: Just the question of
21 whether there was a communication.

22 MR. MOERDLER: You know what will happen if
23 the answer is yes so you may as well save some

<p style="text-align: right;">109</p> <p>1 time.</p> <p>2 MR. KENISON-MARVIN: I mean, I'm happy to</p> <p>3 look to, and you will, that would be logged,</p> <p>4 too, you would see that in a privileged log. So</p> <p>5 I'm happy to, I think that that's fair question</p> <p>6 for you to ask.</p> <p>7 MR. MOERDLER: And the last question is</p> <p>8 since Mr. Berwick has said in writing he logs</p> <p>9 everything that passes his desk, that's an</p> <p>10 exaggeration, but would you check with him as</p> <p>11 well?</p> <p>12 MR. KENISON-MARVIN: Who did you ask about?</p> <p>13 MR. MOERDLER: Berwick.</p> <p>14 MR. KENISON-MARVIN: Berwick.</p> <p>15 MR. MOERDLER: All right?</p> <p>16 MR. KENISON-MARVIN: So that we can keep</p> <p>17 things moving here, I'll make sure that we're on</p> <p>18 the same page. Let's talk about this when we're</p> <p>19 all wrapped up just to make sure we're on the</p> <p>20 same page.</p> <p>21 MR. MOERDLER: Okay. Good.</p> <p>22 Q Now, would you tell me, please, referring to</p> <p>23 Exhibit 14, why these materials were included in</p>	<p style="text-align: right;">111</p> <p>1 responsibility to install a value system they</p> <p>2 believe is right for the child. Whether it is a</p> <p>3 rogue educator or a corporation trying to impose</p> <p>4 a value system on impressionable youngsters,</p> <p>5 that is not their job. That is the job of</p> <p>6 parents and caregivers.</p> <p>7 "Fortunately, parents can choose to turn</p> <p>8 off Disney. They can't, however, easily escape</p> <p>9 the efforts of activist educators who might be</p> <p>10 knowingly dismantling the foundations of the</p> <p>11 value system they're attempting to build. That</p> <p>12 means that families, when they send their</p> <p>13 children to school, entrust educators to respect</p> <p>14 the value systems that the family is building,</p> <p>15 that this is the sacred trust that educators</p> <p>16 have."</p> <p>17 So the point of these examples is really to</p> <p>18 flag or highlight content that individuals among</p> <p>19 my constituencies have brought to our attention</p> <p>20 that they believe may conflict with value</p> <p>21 systems of the families of the children that are</p> <p>22 in the schools.</p> <p>23 Q Do you within that framework believe it is not</p>
<p style="text-align: right;">110</p> <p>1 the article? I know you said that you wanted to</p> <p>2 use them as illustrative of something, and I'm</p> <p>3 trying to understand what it is that you're</p> <p>4 trying to communicate as the bottom line</p> <p>5 message --</p> <p>6 A So I think that the OpEd is fairly</p> <p>7 self-explanatory. "When children come to school</p> <p>8 they arrive reflecting the value systems of the</p> <p>9 families responsible for raising them. Those</p> <p>10 value systems are as different as the children</p> <p>11 themselves." I'm going to -- if I continue on.</p> <p>12 "Recent revelations from educators around</p> <p>13 the country, mostly on social media platforms</p> <p>14 like TikTok, reveal a number of educators who</p> <p>15 believe that it is their responsibility to weigh</p> <p>16 in on and influence the value systems of</p> <p>17 children towards a particular goal. This</p> <p>18 impulse to influence a child's value system is</p> <p>19 not limited to educators."</p> <p>20 And -- then we talk about, I'll just keep</p> <p>21 reading. "As was recently revealed, Disney also</p> <p>22 wants to weigh in. It is not good enough simply</p> <p>23 to allow parents and caregivers the</p>	<p style="text-align: right;">112</p> <p>1 the responsibility of teachers to influence the</p> <p>2 value systems of the children toward a</p> <p>3 particular goal such as "thou shalt not steal"?</p> <p>4 A So I believe that it is the responsibility of</p> <p>5 the educators to support parents and support the</p> <p>6 value systems of parents in the education of</p> <p>7 children.</p> <p>8 Q And those values being whatever the parent deems</p> <p>9 appropriate?</p> <p>10 A Well, so we have content standards that they</p> <p>11 teach to students, and those content standards</p> <p>12 are broad in terms of the content that they</p> <p>13 have. So for example, in our social studies</p> <p>14 content standards, we talk about the importance</p> <p>15 of law abiding, and stealing would not be law</p> <p>16 abiding. So the parents would know in advance</p> <p>17 that this is the content that their children</p> <p>18 might learn which is thou shalt not steal. So</p> <p>19 that would be a value system that the parent</p> <p>20 understands entering into the system, that that</p> <p>21 is a value system of our historical context that</p> <p>22 will be presented to their children.</p> <p>23 Q I'm going to ask you, if I may, simply to</p>

<p style="text-align: right;">113</p> <p>1 identify a couple of documents. I'm going to</p> <p>2 show you a document which has the Bates stamp</p> <p>3 871, and we'll mark that as an exhibit. It's a</p> <p>4 document from you to "m41 hillsboroughnh."</p> <p>5 (Exhibit 41 marked for identification)</p> <p>6 Q You've seen that before?</p> <p>7 A Hang on. I'm just finishing reading it, if I</p> <p>8 may. Okay. So I'm familiar with this email.</p> <p>9 Q This is an authentic copy of it?</p> <p>10 A I believe so.</p> <p>11 Q I'm going to show you a document that's been</p> <p>12 Bates stamped DOE 00866 and ask you if you are</p> <p>13 familiar with this document.</p> <p>14 (Exhibit 42 marked for identification)</p> <p>15 A Let me just read this. Okay. I'm familiar with</p> <p>16 Exhibit 42 now.</p> <p>17 Q That is a document that you --</p> <p>18 A I believe I'm familiar with it, yes.</p> <p>19 Q One more and we'll ask the question. Same</p> <p>20 question will apply on this document, your</p> <p>21 familiarity with it.</p> <p>22 (Exhibit 43 marked for identification)</p> <p>23 A So I'm familiar with all three of these.</p>	<p style="text-align: right;">115</p> <p>1 Q I have one last question.</p> <p>2 A I believe as well I called the superintendent</p> <p>3 and indicated to him that Representative Andrus</p> <p>4 was inquiring about this matter also.</p> <p>5 Q One last question. Do you have any recollection</p> <p>6 of having suggested to Ms. Fenton and/or</p> <p>7 Mr. Farrell at any point in time that they</p> <p>8 should steer questions relating to possible</p> <p>9 misconduct areas away from you or handle it</p> <p>10 themselves?</p> <p>11 A I don't recall such a conversation.</p> <p>12 Q Would you have had such a conversation? Would</p> <p>13 you have suggested they take them away from you,</p> <p>14 they should handle them without you?</p> <p>15 A So I don't believe so, and that would be</p> <p>16 contradictory to our operation and function as</p> <p>17 an agency.</p> <p>18 Q Thank you. I thank you for your cooperation.</p> <p>19 EXAMINATION</p> <p>20 BY MR. BISSONNETTE:</p> <p>21 Q Thank you, Commissioner. I know we have an hour</p> <p>22 left, and I'm going to be as brief as I can.</p> <p>23 Again, to introduce myself, I'm Gilles</p>
<p style="text-align: right;">114</p> <p>1 Q One more document.</p> <p>2 I'll show you one more document and ask you</p> <p>3 if you recall receiving this document from</p> <p>4 Representative Louise Andrus on or about May 15,</p> <p>5 2022.</p> <p>6 (Exhibit 44 marked for identification)</p> <p>7 A I've reviewed all four documents.</p> <p>8 Q And do you recall receiving the document that</p> <p>9 would be Exhibit 44?</p> <p>10 A I believe I did.</p> <p>11 Q Do you have any recollection of having responded</p> <p>12 to it?</p> <p>13 A I do believe I had a conversation with</p> <p>14 Representative Andrus.</p> <p>15 Q What did you say to her and what did she say to</p> <p>16 you if you remember?</p> <p>17 A If I recall correctly, I encouraged her to talk</p> <p>18 to the superintendent and indicate that the</p> <p>19 titles of the books would be subject probably to</p> <p>20 a Right-to-Know request and that collaboration</p> <p>21 and cooperation might make it easier for both</p> <p>22 parties to be able to satisfy the needs that Ms.</p> <p>23 Andrus was seeking.</p>	<p style="text-align: right;">116</p> <p>1 Bissonnette with the ACLU. I'm here on behalf</p> <p>2 of the Plaintiffs Mejia and Philibotte.</p> <p>3 Cindy, would you mind just reading back</p> <p>4 that last response? I just wanted to ask a</p> <p>5 followup question.</p> <p>6 (Requested portion read back by court reporter)</p> <p>7 Q Why would it be contradictory to how your agency</p> <p>8 functions?</p> <p>9 A Because when the "committee" to use the</p> <p>10 attorney's comment but basically when the Bureau</p> <p>11 of governance meets to review various matters</p> <p>12 associated with their work they're going to</p> <p>13 bring to me anything that they think is</p> <p>14 important for me to look at.</p> <p>15 Q And you are involved in the decision-making</p> <p>16 process concerning whether something may</p> <p>17 constitute a violation of the Code of conduct?</p> <p>18 A So I think I've described before how in that</p> <p>19 meeting there's a presentation of various</p> <p>20 matters in various stages of development, and</p> <p>21 there is generally a recommendation from the</p> <p>22 team in terms of if there was some type of an</p> <p>23 action that we would take including gathering</p>

<p style="text-align: right;">117</p> <p>1 additional information or something else, then I</p> <p>2 would weigh in in that conversation on that.</p> <p>3 Q Do you view your role in those meetings as</p> <p>4 accepting or rejecting the recommendations that</p> <p>5 are presented to you?</p> <p>6 A No. I review it as supervisory of a function in</p> <p>7 the agency.</p> <p>8 Q But you're involved in the final approval</p> <p>9 process then it sounds like; is that fair to</p> <p>10 say?</p> <p>11 A Yes. Can I just clarify that?</p> <p>12 Q Of course.</p> <p>13 A I'm involved in the final approval process when</p> <p>14 it reaches a point of a final action that may be</p> <p>15 taken. It is possible that there are matters</p> <p>16 that are resolved that either I have forwarded</p> <p>17 over or have come in in other places that they</p> <p>18 may take, act on, and it never rises to the</p> <p>19 level of attention that they believe I need to</p> <p>20 be part of that conversation.</p> <p>21 Q Is something that would reach your level of</p> <p>22 attention included in the Department's</p> <p>23 determination as to whether or not there's been</p>	<p style="text-align: right;">119</p> <p>1 So it's really my involvement is in that</p> <p>2 process where there's some type of an agreement</p> <p>3 reached with an educator and then I would sign</p> <p>4 that settlement agreement.</p> <p>5 Q What if there's not an agreement reached and the</p> <p>6 Department thinks there's a violation, how are</p> <p>7 you involved in that process?</p> <p>8 A So generally not, I mean, I may have been</p> <p>9 involved leading up to the point where there's</p> <p>10 no agreement that's reached. It's only ever</p> <p>11 happened twice I think since I've been here.</p> <p>12 And those matters then fall to Diana, and they</p> <p>13 arrange for a Hearing Officer to hear it, and</p> <p>14 then it goes before the State Board of</p> <p>15 Education. But my role, I'm no longer part of</p> <p>16 that process.</p> <p>17 Q I don't mean to beat a dead horse --</p> <p>18 A No, no. That's okay.</p> <p>19 Q But what I'm trying to understand is are you</p> <p>20 involved in essentially what I'm going to call</p> <p>21 like the charging decision. That may not be the</p> <p>22 right term for it, but that's what I'm really</p> <p>23 trying to get at. So I don't know if you can</p>
<p style="text-align: right;">118</p> <p>1 a violation of the Code of conduct?</p> <p>2 A Generally, if there's a violation of the code of</p> <p>3 conduct, then I would know about it.</p> <p>4 Q Would you be involved in the final approval</p> <p>5 process in determining whether, in the</p> <p>6 Department's determination as to whether there's</p> <p>7 a violation?</p> <p>8 A Yes. So the way that most -- and quite frankly,</p> <p>9 I'm going to conjecture a bit, speculate a</p> <p>10 little bit, outside of my realm I would need to</p> <p>11 confer with others in my agency relative to</p> <p>12 this, but the work I'm involved with mostly is</p> <p>13 oftentimes when there is a code of conduct</p> <p>14 violation that's being evaluated by the</p> <p>15 governance team, they are working with the</p> <p>16 educator, generally the educator's legal</p> <p>17 counsel, and reaching what I inartfully refer to</p> <p>18 as kind of a plea bargain, an agreement in terms</p> <p>19 of what action should be taken. If no agreement</p> <p>20 can be reached, then it's really not a</p> <p>21 Department's action. I believe at that point in</p> <p>22 time it goes to a hearings officer and to the</p> <p>23 State Board of Education.</p>	<p style="text-align: right;">120</p> <p>1 describe your involvement in that piece.</p> <p>2 A So most of the time the way that it works is</p> <p>3 that there's a recommendation made to me by my</p> <p>4 governance team, and then we discuss how they</p> <p>5 arrived there and if that seems like it's an</p> <p>6 appropriate place.</p> <p>7 Q That's helpful. Thank you. I don't know</p> <p>8 anything about this so I appreciate it, besides</p> <p>9 what I've learned in this case.</p> <p>10 I want to direct your attention,</p> <p>11 Commissioner, to two exhibits that are already</p> <p>12 before you that have been previously marked.</p> <p>13 Exhibits 18 and 14. So if you can just have</p> <p>14 those in front of you. I know you may already</p> <p>15 have Exhibit 14 in front of you.</p> <p>16 A I don't know if I have 18.</p> <p>17 Q 18 might be a new one for you. Thank you.</p> <p>18 A Trying to keep track here. And 14 is the other</p> <p>19 one I do have. Yes.</p> <p>20 Q Commissioner, this is the exhibit we talked</p> <p>21 about. So if you do need assistance, please let</p> <p>22 me know in reviewing it.</p> <p>23 So I'd just ask you, so my question which</p>

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1 is not a question is I just ask you to review
 2 Exhibit 18 and let me know when you're done,
 3 please.
 4 A So your question?
 5 Q I'm just going to direct your attention to the
 6 page 10287 on Exhibit 18 with the line, can you
 7 look into this. Do you see the language?
 8 A Yes. Well, I can't see it now, but now I can.
 9 Q Fair enough. So that's the portion of the chain
 10 that you are on; is that correct?
 11 A Correct. I am on that portion of the chain.
 12 Q And if I direct your attention to the bottom of
 13 that page on 10287, there is an email from Ms.
 14 [REDACTED] to you saying, "This was brought to my
 15 attention today. A Human Relations teacher at
 16 the Londonderry High School gave these
 17 worksheets out to students. Is this allowed."
 18 Do you see the language?
 19 A That's the very first string of the email.
 20 Q Exactly. And the last two pages are those
 21 worksheets. Correct?
 22 A I can assume that they are, but I don't know.
 23 I'd have to go back and look at the original

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1 email.
 2 Q Okay. I'm going to -- do you recall seeing
 3 those worksheets on or around April 4th, 2022?
 4 A I mean, I may have. I'd have to go back and
 5 refresh my memory because I see a lot of
 6 content.
 7 (Court reporter admonition re simultaneous talking)
 8 Q I'm trying to cut to the chase. All I'm really
 9 trying to get at is demonstrating that that
 10 attachment was in your April 2022 OpEd.
 11 So now I'm going to direct your attention
 12 to Exhibit 14 on Topic Seven, Bates stamped PL
 13 735 to 737. Do you see those?
 14 A I see those.
 15 Q Are those the same worksheets that are in
 16 Exhibit 18?
 17 A They appear to be, yes.
 18 Q And in fact, did you get those worksheets --
 19 A So the only thing I would correct is that the,
 20 on PL 00737 there are, in Exhibit 14 there's
 21 redactions of responses, and those are not
 22 redacted in 10289.
 23 Q Gotcha. So thank you for that, and that's an

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1 important clarification. Are the pages in
 2 Exhibit 14, Topic Seven, Bates stamped 736 to
 3 737, the same worksheets that you received on
 4 April 4th?
 5 A I believe they probably are, but without going
 6 back to the original email, right? But I
 7 believe they probably are.
 8 Q Gotcha. So your understanding is that these
 9 worksheets in Exhibit 14 that we just
 10 referenced, you received those about a little
 11 over a week prior to the publication of your
 12 April 15th OpEd receiving them from a Ms.
 13 [REDACTED], correct?
 14 A I believe so.
 15 Q We're done with that. Thank you. I just have a
 16 couple other, well, few other questions.
 17 There's a duty to report under the educator
 18 Code of conduct, correct?
 19 A I believe there's a duty to report for every
 20 citizen in the State of New Hampshire.
 21 Q What do you mean by that?
 22 A If someone believes that a child is being
 23 abused, then they have a duty to report.

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1 Q Fair enough. You're referring to New Hampshire
 2 abuse and neglect statute?
 3 A Correct, which is a duty to report.
 4 Q Fair enough. What I'm referring to, though, is
 5 the duty to report in the Educator Code of
 6 conduct. Would you agree with me that there's a
 7 duty to report under the Educator Code of
 8 conduct?
 9 A Yes, I believe there is.
 10 Q And there's a specific provision in the
 11 Education administrative rules governing the
 12 contours of that duty to report obligation,
 13 correct?
 14 A I believe so. I haven't looked at that portion
 15 of the rules in some time, but I believe that
 16 there is a duty to report for educators relative
 17 to misconduct.
 18 Q Fair enough. That would include violations of
 19 HB 2, correct? Because HB 2 is part of the
 20 Educator Code of conduct?
 21 MR. KENISON-MARVIN: Objection. Vague and
 22 legal contention.
 23 A So can you repeat the question?

<p style="text-align: right;">125</p> <p>1 Q Could you read it back?</p> <p>2 (Requested portion read back by court reporter)</p> <p>3 A So I believe, and I haven't looked at the</p> <p>4 Educator code of conduct of recent, but I</p> <p>5 believe that the code of conduct refers to RSA</p> <p>6 354-A. I don't know if it makes reference to</p> <p>7 193:40.</p> <p>8 Q I'd just refer you to Exhibit 1.</p> <p>9 A Which one?</p> <p>10 Q Exhibit 1.</p> <p>11 A Yes, I do. Okay.</p> <p>12 Q I'm just going to direct your attention to page</p> <p>13 Bates stamped 07.</p> <p>14 A Okay.</p> <p>15 Q IV.</p> <p>16 A Yes.</p> <p>17 Q That says violation of this section by an</p> <p>18 educator shall be considered a violation of the</p> <p>19 educator code of conduct that justifies</p> <p>20 disciplinary sanction by the state board of</p> <p>21 education. Do you see that?</p> <p>22 A I do.</p> <p>23 Q So is a violation of HB 2 a violation of the</p>	<p style="text-align: right;">127</p> <p>1 this looks like this is an exchange between you</p> <p>2 and an individual named Kyle Sanborn who is a</p> <p>3 member of the Gilford School Board. Is that an</p> <p>4 accurate reflection of Exhibit 45?</p> <p>5 A He asserts that he is a member of the Gilford</p> <p>6 School Board. I'm not intimately familiar with</p> <p>7 that.</p> <p>8 Q Any reason to disbelieve --</p> <p>9 A No.</p> <p>10 Q There's reference here on the bottom of page 67</p> <p>11 of Exhibit 45 that there is a section that you</p> <p>12 will be referencing. Do you see that language?</p> <p>13 A I do.</p> <p>14 Q Where would you have referenced this -- strike</p> <p>15 that.</p> <p>16 I'll go back to that question. What</p> <p>17 context would you have been referencing the</p> <p>18 language at the bottom of page 67 of Exhibit 45?</p> <p>19 A So from the email and my recollection of the</p> <p>20 conversation is he believed that there was, he</p> <p>21 states in his email to me, and I think, I don't</p> <p>22 see it in that email, but I believe it was part</p> <p>23 of the conversation about a duty to report and</p>
<p style="text-align: right;">126</p> <p>1 educator code of conduct?</p> <p>2 MR. KENISON-MARVIN: Same objection.</p> <p>3 A So your initial question was is HB 2 part of the</p> <p>4 code of conduct. I responded that RSA 354-A is</p> <p>5 part of the educator code of conduct. This</p> <p>6 states clearly that the violation of this</p> <p>7 section by an educator shall be considered a</p> <p>8 violation of the educator code of conduct that</p> <p>9 justifies disciplinary sanction by the state</p> <p>10 board of education.</p> <p>11 Q And that section is RSA 193:40, correct?</p> <p>12 A Correct.</p> <p>13 Q Okay. Sorry. I now understand why you said</p> <p>14 what you said. Thank you for that.</p> <p>15 A Okay.</p> <p>16 Q Fair enough. No, I've got you. I'm going to</p> <p>17 mark an exhibit here, and I do not know where we</p> <p>18 are.</p> <p>19 (Exhibit 45 marked for identification)</p> <p>20 Q When you're done reviewing Exhibit 45, just let</p> <p>21 me know, please.</p> <p>22 A Okay. So I've read it.</p> <p>23 Q I'm just going to submit to you, Commissioner,</p>	<p style="text-align: right;">128</p> <p>1 so I was trying to reference back to him this</p> <p>2 duty to report.</p> <p>3 Q I guess what I'm interested in is the language</p> <p>4 "that I will be referencing."</p> <p>5 A Yes.</p> <p>6 Q Where would you be referencing this is what I'm</p> <p>7 trying to get at. Was there a presentation, a</p> <p>8 speaking engagement? Is that what you were</p> <p>9 referring to there?</p> <p>10 A I'm not certain. Because the email is a little</p> <p>11 bit kind of chopped up as well. You'll see like</p> <p>12 there's a certain font and is this correct and</p> <p>13 it pastes something in then I have a statement</p> <p>14 down below that says, and there's an aberrant</p> <p>15 parentheses floating around in there, any</p> <p>16 credential holder shall report any suspected</p> <p>17 violation of code of conduct following the</p> <p>18 school, the school district or the SAU reporting</p> <p>19 procedures.</p> <p>20 So I'm referencing this in this</p> <p>21 conversation is what I believe I'm doing.</p> <p>22 Q Do you recall anything else about your</p> <p>23 communications with Mr. Sanborn you haven't</p>

<p style="text-align: right;">129</p> <p>1 testified to?</p> <p>2 A I believe that Mr. Sanborn was concerned about</p> <p>3 the new law, and he was concerned whether or not</p> <p>4 educators were following that.</p> <p>5 Q Did you ever have a communication with Mr.</p> <p>6 Sanborn outside of what exists in Exhibit 45?</p> <p>7 A So the only the thing is I did, I met him at an</p> <p>8 event up in Gilford. Might have been the</p> <p>9 Belknap County meeting and had a conversation</p> <p>10 with him there. That was the conversation I had</p> <p>11 that I recall.</p> <p>12 Q Did you talk about the duty to report at that</p> <p>13 meeting?</p> <p>14 A I don't recall that.</p> <p>15 Q Do you recall talking about HB 2?</p> <p>16 A I don't recall if I did what I might have said.</p> <p>17 Q We can move on from that document. I promised</p> <p>18 to be efficient.</p> <p>19 The next exhibit is 46.</p> <p>20 (Exhibit 46 marked for identification)</p> <p>21 Q So Commissioner, I'm actually, before you read</p> <p>22 that, I'd also just ask you to pull Exhibit 29.</p> <p>23 These two documents go hand in hand. I don't</p>	<p style="text-align: right;">131</p> <p>1 Richard Farrell wrote. It's unclear who that</p> <p>2 was sent to although the respondent at the top</p> <p>3 is Karlyn Borysenko.</p> <p>4 Q I know you're not on this email. Have you seen</p> <p>5 Exhibit 29 before?</p> <p>6 A Let me just read it?</p> <p>7 Q Of course. Please do.</p> <p>8 A So I've read 29.</p> <p>9 Q So the bottom of page 29, Mr. Farrell tells Ms.</p> <p>10 Borysenko, Commissioner Edelblut has forwarded</p> <p>11 your inquiry directly to Ahni Malachi on 19</p> <p>12 August 2022 for her review.</p> <p>13 So my question is do you recall ever</p> <p>14 sending an inquiry from Ms. Borysenko to</p> <p>15 Director Malachi in August of 2022?</p> <p>16 A I don't have that recollection.</p> <p>17 Q Now I'm going to have to direct your attention</p> <p>18 to Exhibit 46.</p> <p>19 A Okay.</p> <p>20 Q So exhibit, I would just represent to you</p> <p>21 Exhibit 46, also a document you are not on, is</p> <p>22 an email from Ms. Borysenko to the Human Rights</p> <p>23 Commission but also copying Department of</p>
<p style="text-align: right;">130</p> <p>1 want to hide the ball here.</p> <p>2 A Do I have 29? I don't recall having 29 yet. We</p> <p>3 just need to get that.</p> <p>4 Q Just let me know when you have both exhibits in</p> <p>5 front of you.</p> <p>6 A Which one should I read first?</p> <p>7 Q I'm not going to have you read any right now,</p> <p>8 but I'm sure that I'm going to have you to refer</p> <p>9 to them. Are you aware of a woman named Karlyn</p> <p>10 Borysenko?</p> <p>11 A Maybe the name is vaguely familiar. It's an</p> <p>12 unusual name, but that's the extent that I have</p> <p>13 for that.</p> <p>14 Q Okay. So maybe I will direct your attention now</p> <p>15 to the exhibits. Your name is not on either of</p> <p>16 them so that's why I hesitated to officially</p> <p>17 direct your attention to them.</p> <p>18 So first I'm going to direct your attention</p> <p>19 to Exhibit 29 in the email from Mr. Farrell to</p> <p>20 Karlyn Borysenko. Do you see that email? I</p> <p>21 haven't asked you to read it yet, but do you see</p> <p>22 the email I'm referencing?</p> <p>23 A So I see an email that says on August 24 at 9:37</p>	<p style="text-align: right;">132</p> <p>1 Education. What I'm referring to there is the</p> <p>2 email at the bottom of page 9900 in Exhibit 46.</p> <p>3 Do you see that?</p> <p>4 A I see an email from Karlyn to the Human Rights</p> <p>5 Commission with a cc to DOE info and Rich</p> <p>6 Farrell.</p> <p>7 Q So there are to two attachments to this email.</p> <p>8 Exeter Regional School District Violation and</p> <p>9 Exeter Regional School District Violation Data.</p> <p>10 I'm going to submit to you on the version that</p> <p>11 you have in Exhibit 46 you only have one of</p> <p>12 those attachments. We're sorting that out with</p> <p>13 your counsel, but I wanted to flag this is not a</p> <p>14 full and complete document with all the</p> <p>15 attachments.</p> <p>16 But my question to you is do you recall of</p> <p>17 seeing this email on page 9901 of Exhibit 46 and</p> <p>18 the HRC form that Ms. Borysenko completed also</p> <p>19 in Exhibit 46?</p> <p>20 A Yes, I have no recollection of seeing either of</p> <p>21 these.</p> <p>22 Q So you, I presume then it's fair to say you have</p> <p>23 no recollection of ever forwarding this August</p>

<p style="text-align: right;">133</p> <p>1 19th, 2022, complaint to Director Malachi?</p> <p>2 A Correct.</p> <p>3 Q Do you ever send complaints under HB 2 to</p> <p>4 Director Malachi directly?</p> <p>5 A I don't believe I ever have.</p> <p>6 Q Okay. Do you have any -- let me go back to</p> <p>7 Exhibit 29.</p> <p>8 Mr. Farrell represents that you forwarded</p> <p>9 Ms. Borysenko's inquiry directly</p> <p>10 Mr. Commissioner Malachi. Would you have any</p> <p>11 reason to think that Mr. Farrell is mistaken?</p> <p>12 A Or it could be that Mr. Farrell is referring to</p> <p>13 the fact that it's possible that either he or</p> <p>14 Diana forwarded something representing the</p> <p>15 agency, and so maybe that's what he's referring</p> <p>16 to when he's referring to that.</p> <p>17 Q Do you know one way or the other sitting here</p> <p>18 today though?</p> <p>19 A No.</p> <p>20 (Exhibit 47 marked for identification)</p> <p>21 Q Commissioner Edelblut, I'd just ask you to</p> <p>22 review Exhibit 47 and let me know when you've</p> <p>23 finished your review.</p>	<p style="text-align: right;">135</p> <p>1 email?</p> <p>2 A I don't know what Attorney Fenton's actions were</p> <p>3 with respect to this. I believe she may have</p> <p>4 had conversations with the Attorney General's</p> <p>5 office.</p> <p>6 Q I guess my question is do you know whether or</p> <p>7 not the Department had any communications with</p> <p>8 Mr. Hewitt about this email after it was sent on</p> <p>9 August 25, 2022?</p> <p>10 A I don't believe I've had any email</p> <p>11 correspondence.</p> <p>12 Q Anyone from the Department have email</p> <p>13 correspondence with Mr. Huyett?</p> <p>14 A Not to my knowledge.</p> <p>15 Q Anyone from the Department have verbal</p> <p>16 communication with Mr. Huyett concerning the</p> <p>17 contents of this August 25th email?</p> <p>18 A So I believe that Mr. Huyett followed up in a</p> <p>19 conversation with me and asked me about it and I</p> <p>20 indicated to him that I had referred it to my</p> <p>21 attorney.</p> <p>22 Q Do you recall anything else about that</p> <p>23 conversation sitting here today?</p>
<p style="text-align: right;">134</p> <p>1 A So your question?</p> <p>2 Q My question is you're on this email chain,</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 Q Did your Department ever respond to this press</p> <p>6 inquiry?</p> <p>7 A I don't know the answer to that.</p> <p>8 Q Did you respond to this press inquiry?</p> <p>9 A I don't know the answer to that.</p> <p>10 Q Do you know if any of your colleagues at the</p> <p>11 Department responded to this inquiry?</p> <p>12 A I don't know the answer to that.</p> <p>13 Q You can set it aside.</p> <p>14 (Exhibit 48 marked for identification)</p> <p>15 Q After you've reviewed Exhibit 48, commissioner,</p> <p>16 just let me know that you're done.</p> <p>17 A Yes. Okay. I've read it.</p> <p>18 Q Do you recall receiving this email from Ian</p> <p>19 Huyett on Thursday, August 25th, 2022?</p> <p>20 A I do.</p> <p>21 Q Did you respond in writing to this email?</p> <p>22 A I believe I forwarded this to Diane.</p> <p>23 Q Do you recall Attorney Fenton responding to this</p>	<p style="text-align: right;">136</p> <p>1 A No. I don't. That was the gist of</p> <p>2 conversation.</p> <p>3 Q How long did that conversation last?</p> <p>4 A I don't recall.</p> <p>5 Q So I'm going to ask you -- you can set that</p> <p>6 aside, Commissioner, and I'm moving quickly as</p> <p>7 you can see since I know we're getting close.</p> <p>8 I'm going to have you again put before you</p> <p>9 Exhibit 14 which are the topics to your April</p> <p>10 2022 OpEd. Do you have that in front of you?</p> <p>11 A I do.</p> <p>12 Q I'm going to direct your attention to Topic Ten</p> <p>13 on Exhibit 14 which is Bates stamped 748 to 758.</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q What is Topic Ten?</p> <p>17 A So I believe that this is content that we</p> <p>18 received from a parent that was about Exploring</p> <p>19 Whiteness and Becoming an Anti-Racist, and I</p> <p>20 believe that it takes place in a school district</p> <p>21 as kind of an extra class.</p> <p>22 Q Was that parent Dan Richards?</p> <p>23 A I believe it was.</p>

<p style="text-align: right;">137</p> <p>1 Q I'm just going to, just closing the loop, so I'm</p> <p>2 going to mark another exhibit.</p> <p>3 (Exhibit 49 marked for identification)</p> <p>4 Q So do you have Exhibit 49 before you,</p> <p>5 Commissioner?</p> <p>6 A Yes.</p> <p>7 Q I'm just going to represent to you what this is.</p> <p>8 So this is portions of the legislative history</p> <p>9 of HB 544 in which Mr. Richards submitted some</p> <p>10 written testimony to the House Executive</p> <p>11 Departments and Administration Committee, and</p> <p>12 this is a reflection of what his testimony is.</p> <p>13 A Okay.</p> <p>14 Q Okay? And I would just note that on Exhibit 49</p> <p>15 Mr. Richards attaches a document entitled on</p> <p>16 page 544 241, Exploring Whiteness and Becoming</p> <p>17 an Anti-Racist Activist. Do you see those</p> <p>18 pages?</p> <p>19 A I do.</p> <p>20 Q 241 to 244. Correct?</p> <p>21 A Yes. I'm just pointing out that they're</p> <p>22 different than in 14.</p> <p>23 Q I was just about to do that. So it looks to me</p>	<p style="text-align: right;">139</p> <p>1 the documents, the syllabus on Exhibit 49 that</p> <p>2 Mr. Richards submitted to the House Executive</p> <p>3 Department's Administration Committee is the</p> <p>4 same document that you received from</p> <p>5 Mr. Richards, a portion of which you attached as</p> <p>6 Topic Ten to Exhibit 14; is that correct?</p> <p>7 A Correct.</p> <p>8 Q You can set that aside.</p> <p>9 MR. KENISON-MARVIN: Can I use the</p> <p>10 restroom?</p> <p>11 MR. BISSONNETTE: Of course.</p> <p>12 (Recess taken 2:33 - 2:38 p.m.)</p> <p>13 Q Commissioner, before you you should have two</p> <p>14 exhibits, Exhibits 12 and 13. Are they in front</p> <p>15 of you?</p> <p>16 A They are.</p> <p>17 Q So I'm just going to represent to you that</p> <p>18 Exhibit 12 is an Attorney General Memorandum</p> <p>19 directed to the HRC. Exhibit 13 looks to be</p> <p>20 information, a reflection of a meeting that may</p> <p>21 have occurred on September 8th, 2021, right</p> <p>22 after the date that Exhibit 12 was issued.</p> <p>23 So my question is do you remember a meeting</p>
<p style="text-align: right;">138</p> <p>1 like --</p> <p>2 A Part of the syllabus was cut off at some point.</p> <p>3 Q Yes. Page 241 in Exhibit 49 is the same thing</p> <p>4 as page 749 in Exhibit 14. Correct?</p> <p>5 A That's what it looks like other than there is a</p> <p>6 notation on 00749 that's not on 0241.</p> <p>7 Q Those notations are, in addition to redactions</p> <p>8 in page 749, you also have two handwritten</p> <p>9 comments that say okay. Am I correct?</p> <p>10 A Correct. Those are the notations.</p> <p>11 Q Those redactions on page 749 are the Department</p> <p>12 redactions, I presume?</p> <p>13 A Correct.</p> <p>14 Q Also going to turn your attention on Exhibit 14</p> <p>15 to page 72 of 79 in the upper right. Do you see</p> <p>16 that?</p> <p>17 A Yes.</p> <p>18 Q Same page as page 243 in Exhibit 49. Correct?</p> <p>19 A That looks correct.</p> <p>20 Q And it's the same for the next pages of those</p> <p>21 documents, correct? They're the same?</p> <p>22 A They appear to be.</p> <p>23 Q So I just want to make sure I understand that</p>	<p style="text-align: right;">140</p> <p>1 that took place on September 8, 2021, between</p> <p>2 you and Director Malachi?</p> <p>3 A I don't remember specific -- I mean, I've had</p> <p>4 various meetings with Ahni Malachi over the</p> <p>5 years. I don't remember a specific meeting on</p> <p>6 that day. To be clear as well, I don't actually</p> <p>7 book my calendar. That's done by a scheduler.</p> <p>8 Q Fair enough. Fair enough. I just noticed</p> <p>9 because this is the date right after the AG memo</p> <p>10 was issued so do you recall any meeting with</p> <p>11 Director Malachi about Exhibit 12?</p> <p>12 A I don't.</p> <p>13 Q Okay.</p> <p>14 A In fact, I don't even recall a conversation with</p> <p>15 Ahni Malachi about this AG memo.</p> <p>16 Q Fair enough. When you typically meet with</p> <p>17 Director Malachi on issues is it usually you two</p> <p>18 that are present or are there other individuals</p> <p>19 also that participate or does it depend?</p> <p>20 A It depends on what the issue is. So Ahni</p> <p>21 Malachi is also on the Board of Directors of one</p> <p>22 of our charter schools. So I see her in that</p> <p>23 context, and I see her in a professional</p>

<p style="text-align: right;">141</p> <p>1 context. Generally if I'm meeting with Ahni</p> <p>2 Malachi relative to any matter like this,</p> <p>3 there's probably an Attorney General individual</p> <p>4 who would be present.</p> <p>5 Q Okay. You tell me if this isn't fair to say,</p> <p>6 but I'm relying directly on your OpEd on Exhibit</p> <p>7 4 just to not hide the ball, but is it fair to</p> <p>8 say --</p> <p>9 A Exhibit 4. Which one is that. I do a lot of</p> <p>10 OpEds.</p> <p>11 Q Teach children about racism.</p> <p>12 A Okay.</p> <p>13 Q So what I want to make sure is is it fair to say</p> <p>14 that you supported HB 2?</p> <p>15 A So what I support is to make sure that children</p> <p>16 and educators in New Hampshire are not</p> <p>17 discriminated against in any way, shape or form.</p> <p>18 Q And in your view, as reflected in Exhibit 4,</p> <p>19 they would be protected by HB 2 in your view,</p> <p>20 right?</p> <p>21 A So can you repeat that question?</p> <p>22 Q Strike that. I'm just going to refer you to the</p> <p>23 bottom of Exhibit 4, page 398, quote, "The</p>	<p style="text-align: right;">143</p> <p>1 2, right?</p> <p>2 A I believe those are contributing to that.</p> <p>3 Clearly, I've not in this OpEd excerpted the</p> <p>4 entire content of Exhibit 1.</p> <p>5 Q Um-hum.</p> <p>6 A But I think that these are components that help</p> <p>7 us toward that mission.</p> <p>8 Q I'm not trying to hide the ball here. What I'm</p> <p>9 just trying to get is, Commissioner, you say</p> <p>10 twice in this OpEd, the last line and the first</p> <p>11 line, "legislation recently passed by the New</p> <p>12 Hampshire Senate." That's HB2 as reflected in</p> <p>13 Exhibit 1, correct?</p> <p>14 A Say that again?</p> <p>15 Q Sure. You say in the first line and the last</p> <p>16 line of your OpEd as reflected in Exhibit 4,</p> <p>17 you're referring to legislation recently passed</p> <p>18 by the New Hampshire Senate. You see both of</p> <p>19 those references?</p> <p>20 A Yes.</p> <p>21 Q In there you're referring to HB 2, right?</p> <p>22 A I'm referring to specifically the components of</p> <p>23 193:40, but I believe that the other parts of HB</p>
<p style="text-align: right;">142</p> <p>1 guardrails outlined in this legislation recently</p> <p>2 passed by the New Hampshire Senate help us to do</p> <p>3 just that. "Do just that" is the language that</p> <p>4 precedes that sentence in the OpEd. Do you see</p> <p>5 that language?</p> <p>6 A I mean, it's all of the preceding language like</p> <p>7 a summarizing sentence.</p> <p>8 Q I agree with that. My question is you're</p> <p>9 referring to HB 2 in that sentence, correct?</p> <p>10 A I quote aspects of that legislation in there</p> <p>11 that are, I believe, excerpts from RSA 193:40,</p> <p>12 and so I do believe that that law will help</p> <p>13 protect our teachers and our students from being</p> <p>14 discriminated against.</p> <p>15 Q And, in fact, you say on the opening sentence of</p> <p>16 this OpEd it's important, correct?</p> <p>17 A I think it's important to make sure that our</p> <p>18 students are not discriminated against and our</p> <p>19 teachers are not discriminated against.</p> <p>20 Q So you think it's important.</p> <p>21 A I think not discriminating is important.</p> <p>22 Q When you say "not discriminating," what you're</p> <p>23 referring to are the provisions that refer to HB</p>	<p style="text-align: right;">144</p> <p>1 2 potentially are contributory to that, but this</p> <p>2 OpEd is focused on those elements of 193:40.</p> <p>3 Q I got you. That's fair. I see what you're</p> <p>4 saying. So the language though that you're</p> <p>5 referring to on both the first sentence and the</p> <p>6 last sentence on Exhibit 4 is if I now turn your</p> <p>7 attention to Exhibit 1 the provisions of RSA</p> <p>8 193:40.</p> <p>9 A Well, so not all of 193:40, but specifically</p> <p>10 193:40-I(a), (b), (c), and (d) which are in my</p> <p>11 mind the provisions that the legislation passed</p> <p>12 in order to try and not result in</p> <p>13 discrimination.</p> <p>14 Q In those provisions that you just referenced, is</p> <p>15 it fair to say based on the language in your</p> <p>16 OpEd that you supported that language?</p> <p>17 A So I believe as I have indicated in this OpEd</p> <p>18 that that will help avoid discrimination against</p> <p>19 our educators and our students in New Hampshire.</p> <p>20 Q You're saying something a little bit different</p> <p>21 from what I'm asking which is did you support</p> <p>22 that language?</p> <p>23 A So I don't know what you mean by "support that</p>

<p style="text-align: right;">145</p> <p>1 language."</p> <p>2 Q Did you oppose it? Did you oppose the language?</p> <p>3 A So I don't have an opportunity to vote yes or no</p> <p>4 on any particular piece of legislation, and so</p> <p>5 in this OpEd I'm reflecting my opinion that</p> <p>6 those aspects of RSA 193:40 that are referenced</p> <p>7 and summarized in this OpEd are important</p> <p>8 towards avoiding discrimination of our students</p> <p>9 and our students in New Hampshire.</p> <p>10 Q And in your view they're also needed, correct?</p> <p>11 A Well, I believe that those provisions will help</p> <p>12 avoid discrimination of students and educators</p> <p>13 in the state of New Hampshire. Whether or not</p> <p>14 they're needed is a determination that the</p> <p>15 legislature has to make.</p> <p>16 Q I'm just using your language, Commissioner. I</p> <p>17 don't mean to fight you on this, but you say in</p> <p>18 the opening sentence of Exhibit 4 that it's</p> <p>19 needed. That was your position, correct?</p> <p>20 A Yes, it is.</p> <p>21 Q Okay. So I'm just going to ask you again. Is</p> <p>22 it fair for me to characterize Exhibit 4 as</p> <p>23 reflecting the Department of Education's support</p>	<p style="text-align: right;">147</p> <p>1 simply provide legislators with either the</p> <p>2 benefits or the negative consequences as we</p> <p>3 understand them associated with proposed</p> <p>4 legislation.</p> <p>5 Q You're familiar with the parental bill of rights</p> <p>6 legislation?</p> <p>7 A I am.</p> <p>8 Q Did the Department of Education take a position</p> <p>9 on that piece of legislation?</p> <p>10 A We did not.</p> <p>11 Q Did the Department of Education tweet about the</p> <p>12 outcome of that bill this week?</p> <p>13 A I believe it did.</p> <p>14 Q Do you recall a statement, quote, "The New</p> <p>15 Hampshire Department of Education is</p> <p>16 disappointed with the indefinite postponement of</p> <p>17 SB 272 by the House and is hopeful that this</p> <p>18 conversation will continue since it is possible</p> <p>19 to simultaneously support students, educators,</p> <p>20 and parents." Do you recall that?</p> <p>21 A So I believe that that is a partial reflection</p> <p>22 of a statement that this Department put out.</p> <p>23 Q You don't think that that tweet reflects the</p>
<p style="text-align: right;">146</p> <p>1 for the provisions of HB 2 reflected in RSA</p> <p>2 193:40 that you mentioned just moments ago?</p> <p>3 A I think the better way to understand this OpEd</p> <p>4 is that I as the Commissioner of Education</p> <p>5 believe that we do not want to, and as the</p> <p>6 title, states, right? We want to teach our</p> <p>7 children about racism and not to be racist so</p> <p>8 that is the intent of this OpEd.</p> <p>9 Q And the portions that you referenced before in</p> <p>10 RSA 193:40 would do that in your view, correct?</p> <p>11 A I believe that they will contribute to that.</p> <p>12 Q And therefore in your view that language is</p> <p>13 important and needed, correct?</p> <p>14 A So I believe that that language is needed in the</p> <p>15 context of being helpful towards making sure</p> <p>16 that our teachers and our students are not</p> <p>17 discriminated against.</p> <p>18 Q Okay.</p> <p>19 (Exhibit 50 marked for identification)</p> <p>20 Q Before I direct your attention to Exhibit 50,</p> <p>21 does the Department of Education take positions</p> <p>22 on legislation?</p> <p>23 A We do not take positions on legislation. We</p>	<p style="text-align: right;">148</p> <p>1 Department's support for SB 272?</p> <p>2 A So similar to the OpEd which was put out after</p> <p>3 the legislature acted on the legislation and</p> <p>4 that tweet which was put out after the</p> <p>5 legislature acted on it, we are simply</p> <p>6 reflecting what we believe are the benefits or</p> <p>7 detrimental effects of certain legislation.</p> <p>8 Q So I just want to make sure I understand your</p> <p>9 testimony. You don't believe that tweet that</p> <p>10 was published last week to reflect the</p> <p>11 Department's support for that bill? You don't</p> <p>12 interpret it that way?</p> <p>13 A So what I would understand that to be is it's</p> <p>14 not possible to support something that is no</p> <p>15 longer a bill and is indefinitely postponed.</p> <p>16 Q Okay. I may have misheard this, Commissioner.</p> <p>17 I apologize if I did, but there was some</p> <p>18 reference before to the book, How to be</p> <p>19 Antiracist, by Ibram X. Kendi. Do you remember</p> <p>20 generally talking about that book earlier today?</p> <p>21 A I believe it came up in your line of</p> <p>22 questioning.</p> <p>23 Q I believe it did. So I want to just direct your</p>

<p style="text-align: right;">149</p> <p>1 attention to page 19 of what's been photocopied.</p> <p>2 The language that is underlined. I just want to</p> <p>3 make sure that's the language that you quoted in</p> <p>4 your OpEd on Exhibit 4. Correct?</p> <p>5 A I can go look.</p> <p>6 Q Okay.</p> <p>7 A So I, the language looks similar. I do note</p> <p>8 that there's a "dot dot dot" in my quotation in</p> <p>9 my OpEd so it could be that my quotation, I</p> <p>10 don't recall exactly where I got it from, but it</p> <p>11 could be from a presentation that Mr. Kendi</p> <p>12 provided some place as opposed to quoting</p> <p>13 directly out of that text, but he may have been</p> <p>14 quoting the text himself, and I quoted that.</p> <p>15 Q Where did you get that quote then in Exhibit 4?</p> <p>16 Do you recall?</p> <p>17 A I don't recall where I got it.</p> <p>18 Q Have you read the book How to be an Antiracist</p> <p>19 by Ibram Kendi, portions of which are reflected</p> <p>20 in Exhibit 50?</p> <p>21 A I have not, and I think I represented that</p> <p>22 already.</p> <p>23 Q Before you were given Exhibit 50 moments ago,</p>	<p style="text-align: right;">151</p> <p>1 00006 that says on line 24 to line 25, "No pupil</p> <p>2 in any public school shall be taught,</p> <p>3 instructed, inculcated or compelled to express</p> <p>4 belief in, or support for, any one or more of</p> <p>5 the following." Do you see that language?</p> <p>6 A I do.</p> <p>7 Q So here I'm not talking about the four concepts</p> <p>8 below. I just have some questions about that</p> <p>9 specific phrase. So that's what I want to get</p> <p>10 at.</p> <p>11 So is there written criteria that the</p> <p>12 Department has that defines what it means to</p> <p>13 teach, instruct, inculcate or compel to express</p> <p>14 belief in or support for something?</p> <p>15 A I would need to make reference to other people</p> <p>16 in the agency to get a more specific response to</p> <p>17 that question.</p> <p>18 Q We have done that, in fairness, but I just want</p> <p>19 to ask you are you aware of any written criteria</p> <p>20 that defines those terms on page 00006 of</p> <p>21 Exhibit 1, lines 24 to 25?</p> <p>22 A So I'm not familiar with them.</p> <p>23 Q So is there any written criteria that you're</p>
<p style="text-align: right;">150</p> <p>1 had you seen the language around the underlying</p> <p>2 portions of Exhibit 50 before today?</p> <p>3 A So can you repeat that question?</p> <p>4 Q Could you read it back? See if I can do a</p> <p>5 better job. I might not be able to.</p> <p>6 (Requested portion read back by court reporter)</p> <p>7 A So to be precise, I've not seen the language in</p> <p>8 the text of the book. I've seen the language</p> <p>9 from other presentations made by Mr. Kendi, and</p> <p>10 they are similar.</p> <p>11 Q They're similar. Did those other references</p> <p>12 that you've seen of Dr. Kendi's quotes, did it</p> <p>13 include contextual language like the contextual</p> <p>14 language that surrounds the underlined quote on</p> <p>15 page 19 of Exhibit 50?</p> <p>16 A I don't recall.</p> <p>17 Q I'm going to -- my notes are all over the place.</p> <p>18 This is what happens when you bat cleanup. So</p> <p>19 I'm going to come back to this, but I want to</p> <p>20 probe a little bit more into your testimony with</p> <p>21 respect to kind of what teaching means, and so</p> <p>22 I'm going to direct your attention back to</p> <p>23 Exhibit 1, and in particular the language on PL</p>	<p style="text-align: right;">152</p> <p>1 aware of in the Department that explains whether</p> <p>2 or not a read-along would constitute teaching,</p> <p>3 instructing, inculcating or compelling to</p> <p>4 express a belief in?</p> <p>5 A I don't know the answer to that.</p> <p>6 Q You mentioned rhetorical devices as a possible</p> <p>7 device that teachers may use. Is there any</p> <p>8 criteria within the Department that explains</p> <p>9 what rhetorical devices a teacher may use that</p> <p>10 would or would not constitute teaching,</p> <p>11 instructing, inculcating or compelling to</p> <p>12 express a belief in?</p> <p>13 A So I'm not aware of that.</p> <p>14 Q Is there any criteria within the Department that</p> <p>15 explains whether assigning a book to students to</p> <p>16 read constitutes teaching, instructing,</p> <p>17 inculcating or compelling to express a belief?</p> <p>18 A I would have to make reference to others in the</p> <p>19 agency.</p> <p>20 Q Sitting here today, are you aware of any?</p> <p>21 A Am I aware of any? Could you repeat that?</p> <p>22 Q Could you just restate my last question?</p> <p>23 (Requested portion read back by court reporter)</p>

<p style="text-align: right;">153</p> <p>1 A So I would have to reach further into the agency</p> <p>2 to determine that.</p> <p>3 Q But sitting here today, are you aware?</p> <p>4 A I'm not aware of what those might be.</p> <p>5 Q So now I want to go back to now Exhibit 50, and</p> <p>6 I want you to just assume for, and I'm</p> <p>7 referencing the underlying language on Exhibit</p> <p>8 50 that's also in your OpEd. I want you to</p> <p>9 assume that a teacher has taught, instructed,</p> <p>10 inculcated that underlined language. If that's</p> <p>11 true, would that underlined language fall under</p> <p>12 any of the four concepts lines 26 to the next</p> <p>13 page on line 3.</p> <p>14 MR. KENISON-MARVIN: I'll object to the</p> <p>15 legal contention, and you can answer.</p> <p>16 A So I will start with the fact that it's not my</p> <p>17 job, it's not within the purview of my</p> <p>18 responsibility to adjudicate whether or not</p> <p>19 certain actions by an educator would be some</p> <p>20 type of an action under 193:40. So I can</p> <p>21 speculate if that's where you want me to go.</p> <p>22 Q I would like you to speculate. How would you</p> <p>23 speculate?</p>	<p style="text-align: right;">155</p> <p>1 is kind of element one of the statute with</p> <p>2 element 2 of the statute which is whether that</p> <p>3 teaching, instruction or inculcating fits within</p> <p>4 one of the four concepts. So what my question</p> <p>5 is trying to do is assume that this would meet</p> <p>6 the definition of teacher inculcate. So I'm</p> <p>7 going to now reframe my question.</p> <p>8 If a teacher taught, instructed or</p> <p>9 inculcated students along the lines of what's</p> <p>10 been underlined on Exhibit 50 that you also</p> <p>11 quote in your OpEd on Exhibit 4, would that fit</p> <p>12 any of the four concepts that are listed at the</p> <p>13 bottom of page 6 and go on to the beginning</p> <p>14 of 07?</p> <p>15 MR. KENISON-MARVIN: I'll make the same</p> <p>16 objection. Vagueness. Legal contention and</p> <p>17 compound. And it represents the nature of the</p> <p>18 first elements of the statute. You can answer.</p> <p>19 A So I think that it would be most clear in the</p> <p>20 mind of an educator to determine whether or not</p> <p>21 in teaching the text that you refer to in</p> <p>22 Exhibit 50 if they are teaching that, one, a</p> <p>23 group in this list of things is inherently</p>
<p style="text-align: right;">154</p> <p>1 A So the question then again is?</p> <p>2 Q The question then is if a teacher taught or</p> <p>3 instructed, those two sentences that are</p> <p>4 underlined on page 50, would it fall in your</p> <p>5 view under any of the four concepts that are</p> <p>6 listed on page 6 of Exhibit 1, line 26, to line</p> <p>7 3 on page 7?</p> <p>8 A Am I allowed to write on this one?</p> <p>9 Q I can give you a copy.</p> <p>10 A I want to just go through and underline all the</p> <p>11 principals and run each of them through my head.</p> <p>12 Q Please do. This can be your copy.</p> <p>13 A The question is with respect to this underlined</p> <p>14 language in Exhibit 50?</p> <p>15 Q Um-hum.</p> <p>16 A So to your question, I think it would depend</p> <p>17 upon the context of the instruction. The</p> <p>18 content itself of Exhibit 50, again, content</p> <p>19 being neutral, it's what you do with that</p> <p>20 content.</p> <p>21 Q So my question is a little different, and I'll</p> <p>22 explain why. So what I'm trying to do is parse</p> <p>23 out teaching, instruction, and inculcating which</p>	<p style="text-align: right;">156</p> <p>1 superior, that one group is inherently racist,</p> <p>2 that one group receives adverse treatment or</p> <p>3 should receive adverse treatment and should be</p> <p>4 discriminated against or receive adverse</p> <p>5 treatment solely because of those</p> <p>6 characteristics or that they cannot and should</p> <p>7 not attempt to treat others without regard to</p> <p>8 those items.</p> <p>9 So those are the four salient questions</p> <p>10 that I think an educator would ask relative to</p> <p>11 any content. Am I teaching that the inherent</p> <p>12 superiority, the inherently racist, the adverse</p> <p>13 treatment, and to not attempt to treat others</p> <p>14 without regard to.</p> <p>15 Q I hear you. My question is a little different.</p> <p>16 My question is would a teacher if they</p> <p>17 taught that underlined language be teaching a</p> <p>18 banned concept under the statute?</p> <p>19 A So there's not enough knowledge to know what the</p> <p>20 question is. Is that teacher when they are</p> <p>21 teaching this part of the context, are they</p> <p>22 teaching that there is an inherently superior</p> <p>23 group, an inherently racist, a group that should</p>

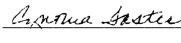
<p style="text-align: right;">157</p> <p>1 receive adverse treatment solely or probably</p> <p>2 because of these characteristics or that they</p> <p>3 cannot and should not attempt to be treated</p> <p>4 without regard to these characteristics. So</p> <p>5 that is really, you have to see the context of</p> <p>6 what's taking place.</p> <p>7 Q Here though the context is, as I'm saying, they</p> <p>8 are teaching or inculcating, that language</p> <p>9 that's underlined. So my question is if they</p> <p>10 are teaching or inculcating that principle that</p> <p>11 is underlined, would that fit any of the</p> <p>12 concepts?</p> <p>13 A So again, you'd have to have its bigger context.</p> <p>14 Right? So you can't --</p> <p>15 Q I'm sorry. Go on.</p> <p>16 A You have to have the full context of what is</p> <p>17 being discussed. I mean, in other words and I</p> <p>18 think we ran into the same problem here. You're</p> <p>19 constructing a hypothetical with one sentence</p> <p>20 and that's not how instruction takes place.</p> <p>21 So you would have to put it in context and,</p> <p>22 again, the individual who is doing the educating</p> <p>23 would be very clear if they are inculcating or</p>	<p style="text-align: right;">159</p> <p>1 A My response would be to go to the statute, go to</p> <p>2 the Q & A which enumerates what you can and</p> <p>3 can't do and ask yourself educator, am I</p> <p>4 teaching, instructing or inculcating a student.</p> <p>5 That seems very clear to the person who's doing</p> <p>6 it that one's age, sex, gender, et cetera, is</p> <p>7 inherently superior to another or that -- et</p> <p>8 cetera. I don't want to --</p> <p>9 Q No, that's fine. Just reciting.</p> <p>10 A Exactly. I've done it a couple times. So this</p> <p>11 is if you're an educator seems like very</p> <p>12 straight forward that you would be able to just</p> <p>13 look at these things. Is my instruction doing</p> <p>14 that, and it's not, the concept here keeps</p> <p>15 coming back to the content.</p> <p>16 Q Even with that, if an educator still had a</p> <p>17 question and thought it was maybe a little bit</p> <p>18 less clear than you seem to think it is, could</p> <p>19 they come to you for advice with respect to how</p> <p>20 to comply with HB 2?</p> <p>21 A So right now we're in the midst of a lawsuit</p> <p>22 with HB 2. So most of the questions that we</p> <p>23 would have would probably end up as a question</p>
<p style="text-align: right;">158</p> <p>1 teaching or instructing students that one's age,</p> <p>2 sex, gender, et cetera, you know, is inherently</p> <p>3 superior to another age, sex, gender or that an</p> <p>4 individual by virtue of their age, sex, gender,</p> <p>5 et cetera, is inherently racist or sexist or</p> <p>6 oppressive or that an individual should be</p> <p>7 discriminated against or receive adverse</p> <p>8 treatment because of their age, sex, gender, et</p> <p>9 cetera or that the people of one age, sex,</p> <p>10 gender cannot and should not attempt to treat</p> <p>11 others without regard to those things. So that</p> <p>12 is the context that you need.</p> <p>13 Q So you can't answer the question without that</p> <p>14 context; is that correct?</p> <p>15 A So what I say is I don't have any instruction in</p> <p>16 New Hampshire that is one sentence long.</p> <p>17 Q What if a teacher had the very question I just</p> <p>18 asked you, how would you respond to that</p> <p>19 teacher? Can I teach page 19 of Exhibit 50.</p> <p>20 Give me guidance. What would your response be?</p> <p>21 MR. KENISON-MARVIN: Objection.</p> <p>22 A I'm sorry. Did you --</p> <p>23 MR. KENISON-MARVIN: Objection. Vague.</p>	<p style="text-align: right;">160</p> <p>1 for perhaps the Human Rights Commission to</p> <p>2 answer.</p> <p>3 Q Okay. Based on your quotation of Dr. Kendi in</p> <p>4 your OpEd on Exhibit 4, do you think it would be</p> <p>5 reasonable for an educator to think they</p> <p>6 couldn't assign Dr. Kendi's book under HB 2?</p> <p>7 MR. KENISON-MARVIN: Objection.</p> <p>8 Speculation. You can answer.</p> <p>9 A So if they were to have reached that conclusion,</p> <p>10 and I would have to speculate relative to that,</p> <p>11 my observation really would be, one, that and</p> <p>12 this is which exhibit? Let me get that right.</p> <p>13 Let me get the right OpEd in front of me. Is</p> <p>14 that they have not read the OpEd in its</p> <p>15 totality. Because really the, if you look at</p> <p>16 the rhetorical device associated with that,</p> <p>17 there is a list of contradictory things the</p> <p>18 paragraph before. Right? "For those who</p> <p>19 promote Critical Race Theory or similar concepts</p> <p>20 their thinking is not built on a foundation of</p> <p>21 common sense, but on ideology, but on ideology</p> <p>22 diametrically opposed to the truths found in our</p> <p>23 Declaration of Independence, that we are all</p>

<p style="text-align: right;">161</p> <p>1 created equal."</p> <p>2 And then I use another counter argument to</p> <p>3 that, and then I present another argument.</p> <p>4 "This idea of is, of course, in complete</p> <p>5 opposition to the Equal Protection clause of the</p> <p>6 Fourteenth Amendment to the US Constitution. As</p> <p>7 Justice John Marshall Harlan stated in his</p> <p>8 dissent of Plessy v. Ferguson, our Constitution</p> <p>9 is color-blind and neither knows nor tolerates</p> <p>10 classes among citizens."</p> <p>11 I then go on to elaborate. "And the</p> <p>12 concepts of Critical Race Theory actually</p> <p>13 contradict the very premises of the civil rights</p> <p>14 movement and Dr. Martin Luther King himself."</p> <p>15 And so what I would encourage my educators</p> <p>16 to do if they were teaching this, so I myself</p> <p>17 have used that contents, and I have used it in</p> <p>18 the context of the Declaration of Independence</p> <p>19 in the context of the Fourteenth Amendment, in</p> <p>20 the context of Plessy v. Ferguson, in the</p> <p>21 context of Martin Luther King so it seems to me</p> <p>22 that the particular text that we're referring to</p> <p>23 is quite rich in terms of the opportunity for</p>	<p style="text-align: right;">163</p> <p>1 is that while you think it's clear you're unable</p> <p>2 to tell me whether if a teacher taught the</p> <p>3 underlined language on Exhibit 4, you're unable</p> <p>4 to tell me whether that's covered under HB 2</p> <p>5 without context. Correct?</p> <p>6 A So let me clarify.</p> <p>7 MR. KENISON-MARVIN: Objection. Still</p> <p>8 vague.</p> <p>9 Q Please do.</p> <p>10 A So then let me clarify. So my question answer</p> <p>11 is that if a teacher were to ask me a question,</p> <p>12 I would provide them with what we believe is a</p> <p>13 large body of guidance for them to be able to</p> <p>14 make a determination or not.</p> <p>15 Q Is any of that guidance in the context of</p> <p>16 specific books that they can or cannot teach</p> <p>17 under the statute?</p> <p>18 A So the premise to your question is about</p> <p>19 content.</p> <p>20 Q Yeah.</p> <p>21 A And that's not, my law says no pupil in any</p> <p>22 public school shall be taught, instructed,</p> <p>23 inculcated relative to that one's sex, et</p>
<p style="text-align: right;">162</p> <p>1 instruction of students.</p> <p>2 Q But I believe your prior testimony said if an</p> <p>3 educator has questions about whether specific</p> <p>4 instruction violates the statute they can't get</p> <p>5 those answers from the DOE right now, it's</p> <p>6 because of this litigation, is that your</p> <p>7 position?</p> <p>8 A So if an educator comes to me, we provide</p> <p>9 information to them, we provide guidance to</p> <p>10 them, and that guidance includes a combination</p> <p>11 of a Q & A document that we have published to</p> <p>12 provide them specific guidance relative to that,</p> <p>13 and it is specific reference to RSA 193:40,</p> <p>14 prohibition of teaching of discrimination which</p> <p>15 in my mind are quite clear in terms of</p> <p>16 clarifying what can and can't happen.</p> <p>17 Our educators are professionally educated.</p> <p>18 They mostly have master's degrees. And so I</p> <p>19 don't think that the guidance that we are</p> <p>20 providing to them is obscure to them or</p> <p>21 unattainable in terms of understanding for</p> <p>22 individuals who are highly educated.</p> <p>23 Q That's true, but I believe your prior testimony</p>	<p style="text-align: right;">164</p> <p>1 cetera, is inherently superior, inherently</p> <p>2 racist, received adverse treatment or cannot and</p> <p>3 should not attempt to treat others without</p> <p>4 regard. It's not content specific. So the</p> <p>5 indicator should not be asking themselves what</p> <p>6 is the content but what is the context of the</p> <p>7 instruction that I'm providing to students.</p> <p>8 Q But you agree with me that you cite content in</p> <p>9 your OpEd, correct, in the form of Dr. Kendi's</p> <p>10 book, right?</p> <p>11 A I cite a number of pieces of content. I cite</p> <p>12 the Declaration of Independence --</p> <p>13 Q Not my question. You cite Dr. Kendi as content,</p> <p>14 correct?</p> <p>15 A So my OpEd cites the Declaration of</p> <p>16 Independence, it cites Dr. Kendi, it cites the</p> <p>17 Fourteenth Amendment, it cites Plessy v.</p> <p>18 Ferguson, it cites Dr. Martin Luther King. So</p> <p>19 my OpEd has a number of citations in that</p> <p>20 context.</p> <p>21 Q Thank you. You cite Dr. Kendi as content,</p> <p>22 correct?</p> <p>23 A I have cited Dr. Kendi as content --</p>

<p style="text-align: right;">165</p> <p>1 Q Thank you.</p> <p>2 A -- in this OpEd.</p> <p>3 Q All I'm asking. Not trying to trick you.</p> <p>4 I'm going to refer you to Exhibit 9. After</p> <p>5 you've reviewed Exhibit 9, just let me know when</p> <p>6 you're ready. Thank you.</p> <p>7 MR. KENISON-MARVIN: Gilles, I don't</p> <p>8 know what your plan is --</p> <p>9 MR. BISSONNETTE: I have five more minutes.</p> <p>10 MR. KENISON-MARVIN: Okay. 5.</p> <p>11 MR. BISSONNETTE: Five more minutes from</p> <p>12 when he says he's reviewed it.</p> <p>13 A So your question?</p> <p>14 Q My question is this is an email between you and</p> <p>15 the President of AFT New Hampshire; is that</p> <p>16 correct?</p> <p>17 A That's correct.</p> <p>18 Q There's a line in here that says, this is the</p> <p>19 second part of a sentence, but I'm just trying</p> <p>20 to streamline things. We also want to reiterate</p> <p>21 our offer to try to work through individual</p> <p>22 circumstances that may be unclear to teachers.</p> <p>23 In these cases the best approach is for them to</p>	<p style="text-align: right;">167</p> <p>1 provided to a teacher if they were confused, the</p> <p>2 Q & A from July 2021 and the statute? Is that</p> <p>3 all you'd give them?</p> <p>4 MR. KENISON-MARVIN: Objection. Vague and</p> <p>5 scope.</p> <p>6 A And I believe pending this lawsuit that that</p> <p>7 would be the extent of the guidance that we</p> <p>8 would provide to them.</p> <p>9 Q So you wouldn't answer if they had a followup</p> <p>10 question, is Dr. Kendi's book, if I teach it, is</p> <p>11 that covered under the statute, you wouldn't be</p> <p>12 able to answer that question?</p> <p>13 MR. KENISON-MARVIN: Objection. Vague.</p> <p>14 A So I would, and I would answer that question for</p> <p>15 the educator principally by looking at the Q & A</p> <p>16 but principally coming back to RSA 913:40, and I</p> <p>17 would say are you teaching, inculcating, or are</p> <p>18 you compelling to express a belief in or support</p> <p>19 for any one or more of the following; that one's</p> <p>20 immutable characteristics are inherently</p> <p>21 superior, that an individual by virtue of these</p> <p>22 immutable characteristics is inherently racist,</p> <p>23 sexist or oppressive or that an individual</p>
<p style="text-align: right;">166</p> <p>1 reach out directly and share the specific facts</p> <p>2 and circumstances so that we can provide them</p> <p>3 with clear guidance.</p> <p>4 Is that a reflection of the Department of</p> <p>5 Education's policy?</p> <p>6 A So I would hope that it is a reflection of the</p> <p>7 Department of Education's policy. I can tell</p> <p>8 you that this email came together with input</p> <p>9 from a variety of places within the agency to be</p> <p>10 able to support the educators at a time when I</p> <p>11 believe there were either lawsuits or threats of</p> <p>12 lawsuits pending.</p> <p>13 Q So if a teacher has questions about whether</p> <p>14 specific instruction is covered by the law, they</p> <p>15 could come to the Department and work through</p> <p>16 individual circumstances that may be unclear to</p> <p>17 them; is that still something that could occur</p> <p>18 today?</p> <p>19 A Correct, and the guidance that we would provide</p> <p>20 them today would be in the form of a Q & A</p> <p>21 guidance and questionnaire as well as reference</p> <p>22 to the statute.</p> <p>23 Q Is that the only guidance that they would be</p>	<p style="text-align: right;">168</p> <p>1 should be discriminated against because of these</p> <p>2 immutable characteristics and that people cannot</p> <p>3 and should not attempt to treat others without</p> <p>4 regard to these immutable characteristics, and I</p> <p>5 believe in that conversation with an educator</p> <p>6 given the highly educated state and status of</p> <p>7 our educators that they would be able to</p> <p>8 understand that and apply that to their</p> <p>9 pedagogy.</p> <p>10 Q I'm asking for your opinion though.</p> <p>11 A Yes.</p> <p>12 Q What is your opinion as to whether or not those</p> <p>13 two sentences in your OpEd fall under the four</p> <p>14 concepts in Exhibit 1. I want to know what your</p> <p>15 opinion is. Could you tell me that?</p> <p>16 A So I think I've made that clear that content is</p> <p>17 not what falls under the RSA 193:40. Behavior</p> <p>18 and how we treat other people including</p> <p>19 instructing, teaching, inculcating or compelling</p> <p>20 to express belief in or support for, the fact of</p> <p>21 inherent superiority, inherently racist, receive</p> <p>22 adverse treatment solely because of these</p> <p>23 immutable characteristics or they cannot and</p>

<p style="text-align: right;">169</p> <p>1 should not attempt to treat others without</p> <p>2 regard to these immutable characteristics. So I</p> <p>3 think that I've asked and answered that several</p> <p>4 times now.</p> <p>5 Q I don't think you've answered it, but I'm going</p> <p>6 to move on.</p> <p>7 A Okay.</p> <p>8 Q Exhibit 14?</p> <p>9 A Yes, I have it in front of me.</p> <p>10 Q There's a reference here if I could find it, and</p> <p>11 I'm expediting this considerably. Topic Eight,</p> <p>12 page 742 to 745. Do you see that? It's a</p> <p>13 chapter of Tiffany Jewell's book, This Book is</p> <p>14 Anti-Racist.</p> <p>15 A Okay.</p> <p>16 Q Do you see that chapter?</p> <p>17 A I do.</p> <p>18 Q Have you read it before?</p> <p>19 A I have.</p> <p>20 Q Did you read it to the Board of Education on</p> <p>21 July 8th, 2021?</p> <p>22 A I believe I did. Or at least excerpts.</p> <p>23 Q Why did you read it to the Board on July 8th,</p>	<p style="text-align: right;">171</p> <p>1 attention, any other complaints about that book?</p> <p>2 A There may have been more than one. I don't</p> <p>3 recall.</p> <p>4 Q Is that parent [REDACTED] ?</p> <p>5 A I don't recall if it was her. I believe it was</p> <p>6 in the Exeter School District.</p> <p>7 Q Given that you referenced that text during the</p> <p>8 July 8, 2021, Board of Education meeting, if I</p> <p>9 taught that chapter, if I'm a middle school</p> <p>10 teacher in Exeter, would I be violating HB 2?</p> <p>11 MR. KENISON-MARVIN: Objection.</p> <p>12 A So that would depend on whether you are</p> <p>13 teaching, instructing, inculcating or compelling</p> <p>14 to express a belief in or support for any one or</p> <p>15 more of the following. That one's age, sex,</p> <p>16 gender identity, sexual orientation, et cetera,</p> <p>17 are inherently superior to other, that they are</p> <p>18 inherently racist, that they receive adverse</p> <p>19 treatment solely or partly because of or that</p> <p>20 they cannot or should not attempt to treat</p> <p>21 others without regard to these immutable</p> <p>22 characteristics.</p> <p>23 Q Besides reading that statue though, you can't</p>
<p style="text-align: right;">170</p> <p>1 2021?</p> <p>2 A Because I needed to make sure that the Board</p> <p>3 understood some of the concerns that parents</p> <p>4 were raising to the Department.</p> <p>5 Q Were those concerns justification for why HB 2</p> <p>6 was necessary?</p> <p>7 MR. KENISON-MARVIN: Objection. Legal</p> <p>8 contention.</p> <p>9 A Can you repeat the question?</p> <p>10 (Requested portion read back by court reporter)</p> <p>11 A So again, HB 2 or really it's RSA 193:40 in</p> <p>12 particular I believe are helpful to ensure that</p> <p>13 our teachers and our students in the State of</p> <p>14 New Hampshire are not discriminated against.</p> <p>15 Q Are you aware of that chapter being used</p> <p>16 anywhere in the State of New Hampshire in</p> <p>17 school?</p> <p>18 A I believe it is. Or it was.</p> <p>19 Q What was your understanding at the time as to</p> <p>20 how it was being used in New Hampshire?</p> <p>21 A I only know that a parent brought it to our</p> <p>22 attention and said that it was being used.</p> <p>23 Q Besides that parent bringing it to your</p>	<p style="text-align: right;">172</p> <p>1 tell me whether if I taught that I'm violating</p> <p>2 the law, right?</p> <p>3 A I would have to see how it's being used in this</p> <p>4 context. When you say "if I taught that," there</p> <p>5 is not a content standard. There is an activity</p> <p>6 standard. So I would have to see it in this</p> <p>7 context, and again, I think that the best person</p> <p>8 to know if they're violating these statutes</p> <p>9 really are the individuals who are actually</p> <p>10 doing the teaching.</p> <p>11 Q But if I taught that chapter.</p> <p>12 A Um-hum.</p> <p>13 Q If I taught it.</p> <p>14 A Yes.</p> <p>15 Q You can't answer today whether I'd be violating</p> <p>16 the statute --</p> <p>17 A Because I don't know what your --</p> <p>18 (Court reporter admonition - simultaneous talking)</p> <p>19 MR. KENISON-MARVIN: Objection. Stop.</p> <p>20 Stop. It's misstating what the statute says,</p> <p>21 first of all, and second, I'm just going to</p> <p>22 instruct him not to answer anymore. Let's talk</p> <p>23 about if we have a basis to continue or not</p>

<p style="text-align: right;">173</p> <p>1 because we've well over.</p> <p>2 MR. BISSONNETTE: I'd like an answer to</p> <p>3 that, and I have one last question.</p> <p>4 MR. KENISON-MARVIN: Well, I'm going to</p> <p>5 instruct -- don't answer the question. We can</p> <p>6 talk about it. I do think that misrepresents</p> <p>7 what the statute says at least and the question</p> <p>8 is very vague the way it's asked right now. So</p> <p>9 I'm happy to talk about it. If we want to do it</p> <p>10 outside of the witness's presence, I can tell</p> <p>11 you specifically my problem is, but we're well</p> <p>12 over. I'm happy to talk about how we're going</p> <p>13 to proceed from this moment, but I've been</p> <p>14 pretty liberal in allowing this to go on beyond</p> <p>15 our agreed time, and I'm happy to talk about</p> <p>16 continuing to keep questions on the table. I</p> <p>17 just, think we need to slow down here and talk</p> <p>18 about where we're at and where we're going.</p> <p>19 MR. BISSONNETTE: Off the record.</p> <p>20 (Discussion off the record)</p> <p>21 (Recess taken 3:20 - 3:25 p.m.)</p> <p>22 (Requested portion read back by court reporter)</p> <p>23 MR. BISSONNETTE: Strike that. I'm going</p>	<p style="text-align: right;">175</p> <p>1 Q Sorry. I didn't understand the terminology. I</p> <p>2 appreciate that.</p> <p>3 Just going through my note. I might be</p> <p>4 done.</p> <p>5 I'm introducing an exhibit and my question</p> <p>6 is just going to be whether you've seen it</p> <p>7 before.</p> <p>8 (Exhibit 51 marked for identification)</p> <p>9 A I don't think I've seen this before.</p> <p>10 Q Do you recall ever speaking to the Northwood</p> <p>11 GOP?</p> <p>12 MR. KENISON-MARVIN: Objection. Vague.</p> <p>13 A Can you put a time frame on that?</p> <p>14 Q November 2021.</p> <p>15 A I don't recall that. I have spoken to the</p> <p>16 Northwood GOP years ago.</p> <p>17 Q This would be to refresh your recollection. So</p> <p>18 I've just marked as Exhibit 52 an email.</p> <p>19 (Exhibit 52 marked for identification)</p> <p>20 Q Does Exhibit 52 refresh your recollection as to</p> <p>21 whether or not you've ever spoken to the</p> <p>22 Northwood GOP?</p> <p>23 A So it refreshes my recollection that I was</p>
<p style="text-align: right;">174</p> <p>1 to withdraw the question.</p> <p>2 Q Can you identify, Commissioner, an incident of</p> <p>3 instruction that occurred in New Hampshire</p> <p>4 before HB 2 that would violate HB 2 had it been</p> <p>5 in effect at the time the instruction occurred?</p> <p>6 MR. KENISON-MARVIN: Objection. Vague.</p> <p>7 Calls for legal contention.</p> <p>8 A I'm not familiar with any.</p> <p>9 Q The Exploring Whiteness syllabus that's on</p> <p>10 Exhibit 14, Topic Ten. I just wanted you to</p> <p>11 describe to me --</p> <p>12 A Just give me the page.</p> <p>13 Q Yes, of course. It's page 749, Topic Ten, of</p> <p>14 Exhibit 14.</p> <p>15 A Okay.</p> <p>16 Q Do you have the context of this class? I</p> <p>17 believe it was in Hanover.</p> <p>18 A I believe it was in Hanover, and I believe it</p> <p>19 was an elective class that students signed up</p> <p>20 for in a specials week that they have.</p> <p>21 Q Was it a class that students were required to go</p> <p>22 to; do you know?</p> <p>23 A I think I indicated it was an elective class.</p>	<p style="text-align: right;">176</p> <p>1 invited. I don't recall if I ever went out and</p> <p>2 spoke to them or not. I don't have recollection</p> <p>3 of that. I do speak to many groups though.</p> <p>4 Q You've spoken to political groups before, fair</p> <p>5 to say?</p> <p>6 A I speak to all kinds of groups.</p> <p>7 Q I know. I get that. I'm just asking political</p> <p>8 groups. Have you spoken to political groups</p> <p>9 before?</p> <p>10 A All kinds of groups.</p> <p>11 Q Which includes political groups, correct?</p> <p>12 A That would include political groups.</p> <p>13 Q And in those political groups, have you</p> <p>14 referenced HB 2 before?</p> <p>15 A I may have answered a question on it or have</p> <p>16 spoken about various aspects of education.</p> <p>17 Q You ever speak about why it was necessary in</p> <p>18 those group meetings?</p> <p>19 A I don't have any specific recollection of the</p> <p>20 type of content that I would have shared on</p> <p>21 that.</p> <p>22 Q Okay.</p> <p>23 MR. BISSONNETTE: We'll all reserve,</p>

<p style="text-align: right;">177</p> <p>1 obviously, and I want to thank the Commissioner</p> <p>2 for his time. Thank you, Elizabeth. Thank you,</p> <p>3 Nate, and thank you, Cindy, very much.</p> <p>4 MR. KENISON-MARVIN: I want to speak with</p> <p>5 the Commissioner briefly about any areas for</p> <p>6 followup before we recess for the day. Give me</p> <p>7 five minutes.</p> <p>8 (Recess taken 3:30 - 3:40 p.m.)</p> <p>9 MR. KENISON-MARVIN: We don't have any</p> <p>10 questions for the witness, and I just want to</p> <p>11 reserve our right to read and sign the</p> <p>12 transcript.</p> <p>13 MR. BISSONNETTE: We'll reserve as well,</p> <p>14 and just thank you everyone very much.</p> <p>15 (Deposition suspended at 3:40 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">179</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 I, Cynthia Foster, Registered Professional</p> <p>2 Reporter and Licensed Court Reporter, duly authorized</p> <p>3 to practice Shorthand Court Reporting in the State of</p> <p>4 New Hampshire, hereby certify that the foregoing</p> <p>5 pages, numbered 7 through 177, are a true and</p> <p>6 accurate transcription of my stenographic notes of</p> <p>7 the deposition of FRANK EDELBLUT who was first duly</p> <p>8 sworn by me on May 23, 2023, for use in the matter</p> <p>9 indicated on the title sheet, as to which a</p> <p>10 transcript was duly ordered;</p> <p>11</p> <p>12 I further certify that I am neither</p> <p>13 attorney nor counsel for, nor related to or employed</p> <p>14 by any of the parties to the action in which this</p> <p>15 transcript was produced, and further that I am not a</p> <p>16 relative or employee of any attorney or counsel</p> <p>17 employed in this case, nor am I financially</p> <p>18 interested in this action.</p> <p>19</p> <p>20</p> <p>21  Cynthia Foster, LCR</p> <p>22</p> <p>23</p>
<p style="text-align: right;">178</p> <p>1 I have carefully read the foregoing</p> <p>2 deposition, and the answers made by me are true.</p> <p>3</p> <p>4</p> <p>5 _____</p> <p>6 FRANK EDELBLUT</p> <p>7</p> <p>8 STATE OF _____</p> <p>9 _____, SS.</p> <p>10</p> <p>11 At _____ on the</p> <p>12 _____ day of _____ A.D.</p> <p>13 2023, personally appeared the above-named FRANK</p> <p>14 EDELBLUT and made oath that the foregoing answers</p> <p>15 subscribed by him are true.</p> <p>16</p> <p>17 Before me,</p> <p>18</p> <p>19 _____</p> <p>20 Notary Public</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">180</p> <p style="text-align: center;">E R R A T A</p> <p>1 I, the undersigned, FRANK EDELBLUT, have read</p> <p>2 the transcript of my deposition held on May 23, 2023,</p> <p>3 in the matter of Local 8027, AFT-New Hampshire,</p> <p>4 AFL-CIO v. Frank Edelblut, Commissioner, et al; and</p> <p>5 the same is true and correct, to the best of my</p> <p>6 knowledge, with the exception of the following</p> <p>7 changes noted below, if any:</p> <p>8 PAGE/LINE CORRECTION AND REASON FOR CORRECTION</p> <p>9 _____</p> <p>10 See attached sheet(s) for additional information:</p> <p>11 ___Yes___No</p> <p>12 _____</p> <p>13 FRANK EDELBLUT</p> <p>14 STATE OF _____)</p> <p>15 _____) ss.:</p> <p>16 COUNTY OF _____)</p> <p>17</p> <p>18 Subscribed and sworn to before me this _____ day</p> <p>19 of _____, 2023.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public</p> <p>23</p> <p>My commission expires:</p> <p>_____</p>

1 I have carefully read the foregoing
2 deposition, and the answers made by me are
3 true.¹

4 
5 FRANK EDELBLUT

6
7
8 STATE OF New Hampshire
9 _____, SS.

10
11 At 25 Hall St., Concord on the
12 29 day of June A.D.
13 2023, personally appeared the above-named FRANK
14 EDELBLUT and made oath that the foregoing answers
15 subscribed by him are true.

16 Before me,

17
18
19 
20 Notary Public

21
22 ¹ Subject to the exception of the changes identified in the accompanying errata sheet and the
23 attachment thereto.

E R R A T A

I, the undersigned, FRANK EDELBLUT, have read the transcript of my deposition held on May 23, 2023, in the matter of Local 8027, AFT-New Hampshire, AFL-CIO v. Frank Edelblut, Commissioner, et al; and the same is true and correct, to the best of my knowledge, with the exception of the following changes noted below, if any:

PAGE/LINE CORRECTION AND REASON FOR CORRECTION

P9 / L10 See attachment

P15 / L3 See attachment

P16 / L17 See attachment

See attached sheet(s) for additional information:

☒ Yes ☐ No

FRANK EDELBLUT

STATE OF NH)
) ss.:
COUNTY OF Merrimack

Subscribed and sworn to before me this 29 day
of June, 2023.

Angela M. Adams
Notary Public

My commission expires:

May 31, 2028



Local 8027, AFT-New Hampshire, et al. v. Frank Edelblut, Commissioner, et al. (No. 1:21-cv-01077-PB)

FRANK EDELBLUT

ERRATA SHEET

ATTACHMENT

Page 9, Line 10, Change:

Replace “party” with “matter” such that the transcript states:

“I was deposed many, many years ago in another *matter* associated with a corporation.”

Reason: Transcription error.

Page 15, Line 3, Change:

Replace “counsel” with “Council” such that the transcript states:

“I’m nominated, and then I go through a confirmation process with the Governor and *Council*.”

Reason: Transcription error.

Page 16, Line 17, Change:

Replace “RSA 21:10” with “RSA 21-N” such that the transcript states:

“Particularly in *RSA 21-N* I believe is the statute.”

Reason: Transcription error.

[intentionally blank; continued on next page]

Page 40, Lines 16–17, Change:

After “We do” add “have a periodic meeting”;
Before “That would be incorrect” add “But”; and
After “That would be incorrect” add “to characterize it as a ‘committee’”

With these changes, the transcript states:

“We do have a periodic meeting. But that would be incorrect to characterize it as a ‘committee.’ It’s not a committee.”

Reason: To clarify testimony.

Page 47, Line 22, Change:

After “Yes” add “, I agree with the objection that the question is vague, but I will try to answer it” such that the transcript states:

“Yes, I agree with the objection that the question is vague, but I will try to answer it. So with respect to this particular complaint, my recollection is that the direction we took was not concern over a specific piece of content so much as it was the Sora app and what students may or may not be able to access using that particular application and whether schools had configured correct security parameters in that application to prevent students from accessing content that may not be developmentally appropriate for them.”

Reason: To clarify testimony.

Page 49, Line 21, Change:

Replace “times” with “types” such that the transcript states:

“I believe in this case that those types of controls had not been configured.”

Reason: Transcription error.

[intentionally blank; continued on next page]

Page 133, Line 20, Change:

After “Yes” add “, I understand.” such that the transcript states:

“Yes, I understand. I have no recollection of seeing either of these.”

Reason: To clarify testimony.

Page 161, Line 17, Change:

Replace “contents” with “content” such that the transcript states:

“And so what I would encourage my educators to do if they were teaching this, so I myself have used that content, and I have used it in the context of the Declaration of Independence in the context of the Fourteenth Amendment, in the context of Plessy v. Ferguson, in the context of Martin Luther King so it seems to me that the particular text that we’re referring to is quite rich in terms of the opportunity for instruction of students.”

Reason: Transcription error.

Page 164, Line 5, Change:

Replace “indicator” with “educator” such that the transcript states:

“So the educator should not be asking themselves what is the content but what is the context of the instruction that I’m providing to students.”

Reason: Transcription error.

[end]